TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 601

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

vs.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 10, 1941
CERTIORARI GRANTED OCTOBER 27, 1941

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1 In the District Court of the United States for the District of Maryland

Civil Action No. 762

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION, PLAINTIFF

vs.

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE, DEFENDANT

Complaint

Filed July 8, 1940

1. The plaintiff is a corporation duly organized and existing under the laws of the State of Maryland, having its principal office in Baltimore, Maryland, and the defendant was, on and subsequent to July 26, 1936, and is now the duly appointed and acting Collector of Internal Revenue of the United States for the District of Maryland, and is a citizen of the State of Maryland.

2. The ground of jurisdiction of this suit is that it is one arising under the statutes provided for Internal Revenue in that it is for the recovery of Seventeen Thousand Nine Hundred Ninety Dollars ($17,990.00) with interest, representing moneys illegally collected by the defendant from the plaintiff as and for Federal Capital Stock taxes for the fiscal years ending June 30, 1936, June 30, 1937, June 30, 1938, and June 30, 1939, respectively, under color of Section 105 (a) of the Revenue Act of 1935, Section 401 (a) of the Revenue Act of 1936, Section 601 (a) of the Revenue Act of 1938 and Section 1200 (a) of the Internal Revenue Code of 1939.

3. The plaintiff was incorporated on September 30, 1935, for the principal purpose of acquiring the property formerly securing the First Mortgage Five Per Cent Bonds of the Washington, Baltimore and Annapolis Electric Railroad Company. On June 14, 1935, the property was sold under foreclosure proceedings and the Bondholders' Protective Committee, representing
2 92.04% of the First Mortgage Bondholders of the company, bought at the sale certain rights of way, easements, terminal properties, and other real estate, located in Baltimore, Washington and Annapolis and at various other points along the line of the defunct railroad company.

Said Committee also bought at said sale the entire capital stock of the Terminal Real Estate Company of Baltimore City, which, in turn, owns the entire capital stock of the Maryland Development and Realty Company of Anne Arundel County, both of which corporations being subsidiaries of said defunct railroad company and the assets of both companies consisting entirely of real estate. These properties and stock of said Terminal Real Estate Company of Baltimore City were transferred to the plaintiff in consideration of the issuance of the shares of the plaintiff to the depositing bondholders of said Washington, Baltimore and Annapolis Electric Railroad Company. The purpose of the formation of the plaintiff corporation was to acquire and hold the real estate belonging to said defunct railroad company, to liquidate the same in an orderly manner, and to distribute to the stockholders the avails of said property.

4. The only activities of the plaintiff corporation since the date of its incorporations have been the owning and holding of real estate formerly belonging to said Washington, Baltimore and Annapolis Electric Railroad Company, the rental of said real estate under short term leases, the payment of taxes and insurance premiums with respect thereto, and the servicing of the property, the sale of the property, the distribution promptly of the avails from the sales to the stockholders of the plaintiff corporation and the doing of such acts as have been necessary to maintain the plaintiff's corporate existence. Filed herewith, marked "Exhibit A," and made a part hereof, is a photostatic copy of all of the minutes of the Board of Directors and Stockholders of the plaintiff corporation from the date of its incorporation to the end of the calendar year 1939, including its certificate of incorporation, by-laws, stock issuance statement

3 and certain letters referred to in said minutes, which papers set forth in detail the activities of the plaintiff since the date of its incorporation to the end of the calendar year 1939. There is also filed herewith and made a part hereof plaintiff's balance sheet as of December 31, 1935, marked "Exhibit B," plaintiff's balance sheet as of December 31, 1936, marked "Exhibit C," plaintiff's balance sheet as of December 31, 1937, marked "Exhibit D," plaintiff's balance sheet as of December 31, 1938, marked "Exhibit E," plaintiff's balance sheet as of December 31, 1939, marked "Exhibit F," and statement of receipts and disbursements of the plaintiff for the year 1935, marked "Exhibit G," statement of receipts and disbursements of the plaintiff for the year 1936, marked "Exhibit H," statement of receipts and disbursements of the plaintiff for the year 1937, marked "Exhibit I," statement of receipts and disbursements of the plaintiff for

the year 1938, marked "Exhibit J," and statement of receipts and disbursements of the plaintiff for the year 1939, marked "Exhibit K."

5. Plaintiff avers that during the fiscal years ended June 30, 1936, June 30, 1937, June 30, 1938, and June 30, 1939, it was not carrying on or doing business within the meaning of the applicable provisions of the Revenue Acts of 1935, 1936, and 1938 and Section 1200 (a) of the Internal Revenue Code of 1939.

6. Plaintiff avers that the plaintiff paid to the defendant and the defendant collected from the plaintiff as capital stock taxes the sum of Six Thousand Dollars ($6,000.00) on July 26, 1936, the sum of Five Thousand Nine Hundred Eighty Five Dollars ($5,985.00) on July 17, 1937, the sum of Three Thousand Dollars ($3,000.00) on July 15, 1938, and the sum of Three Thousand Five Dollars ($3,005.00) on August 25, 1939. Thereafter and within the time allowed by law, to wit, on November 16, 1939, plaintiff filed with the defendant a claim for refund of said taxes and interest in the manner and form as provided by the Regulations of the Treasury Department, a copy of which, marked "Exhibit L," is filed herewith and made a part hereof.

4 7. By letter dated February 19, 1940, the Commissioner of Internal Revenue rejected said claim for refund, a copy of which letter, market "Exhibit M," is filed herewith and made a part hereof.

8. Plaintiff alleges that said capital stock taxes were erroneously collected by the defendant; that the plaintiff was not doing business for any parts of the fiscal years ending June 30, 1936, June 30, 1937, June 30, 1938, and June 30, 1939, respectively, within the meaning of that term as used in the applicable provisions of the Revenue Acts of 1935, 1936, and 1938 and Section 1200 (a) of the Internal Revenue Code of 1939; that such collections had no basis in law and that the plaintiff was not liable to the defendant therefor.

Wherefore the plaintiff demands judgment against the defendant in the sum of Seventeen Thousand Nine Hundred Ninety Dollars ($17,990.00), and interest thereon at the rate of 6% from the respective dates of the payment of said taxes, together with costs of this suit.

SEMMES, BOWEN & SEMMES,
AMBLER H. MOSS,
Attorneys for Plaintiff,
2500 Baltimore Trust Building,
Baltimore, Maryland.

5 *Plaintiff's Exhibit A*

STATE TAX COMMISSION

UNION TRUST BUILDING

Baltimore, Md.

Messrs. SEMMES, BOWEN & SEMMES,
Baltimore Trust Bldg., Baltimore, Md.

GENTLEMEN: You are advised that the Certificate of Incorporation of "Washington, Baltimore and Annapolis Realty Corporation" has been received and approved by the State Tax Commission of Maryland this 30th day of September 1935, and will be recorded.

The receipt of payment of the following fees due on account thereof is hereby acknowledged. Bonus Tax, $136.00. Recording Fee, $10.00.

STATE TAX COMMISSION OF MARYLAND,
by O. M.

6 The first meeting of the Board of Directors of Washington, Baltimore and Annapolis Realty Corporation was held in the Board room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Wednesday, October 16th, 1935, at 11 o'clock a. m.

There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, T. Stockton Matthews, and Julian SaStein, constituting the entire Board of Directors.

Mr. Boyce acted as Chairman of the meeting and Mr. Robertson Griswold acted as Secretary.

The Secretary presented to the meeting a copy of the Certificate of Incorporation which had been filed and approved and accepted by the State Tax Commission of Maryland, on September 30, 1935, and on motion duly made and seconded it was

Resolved, that the Certificate of Incorporation be and the same is hereby accepted and adopted as the charter of the Washington, Baltimore and Annapolis Realty Corporation, and a copy thereof is ordered spread upon the minutes of this meeting, which is accordingly done in the words and figures following:

7 CERTIFICATE OF INCORPORATION

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

This is to Certify:

First.—That we, the subscribers, Lawrence Perin, Bradley T. J. Mettee, Jr., and Arthur E. Griffith, the post office address of each

being 2500 Baltimore Trust Building, Baltimore, Maryland, and each being of full legal age, do under and by virtue of the General Laws of the State of Maryland authorizing the formation of corporations, associate ourselves with the intention of forming a corporation.

Second.—That the name of the Corporation, which is hereinafter called "Corporation" is "Washington, Baltimore and Annapolis Realty Corporation."

Third.—The purposes for which the Corporation is formed and the business or objects to be carried on and promoted by it, are as follows:

(1) To buy, sell, mortgage, lease, build upon, develop, dispose of, and otherwise deal in and with land or lands or interests therein, situate either within or without the State of Maryland; and to engage in and carry on any other business which may be considered necessary or advisable for the purpose of permitting the general development of any such lands or enhancing their value, or furnishing useful or desirable conveniences or advantages to the owners thereof, or dwellers thereon or users thereof;

(2) To lend money upon the security of mortgages on land or otherwise; to conduct a general brokerage, agency, or commission business in the purchase, sale, granting, leasing, and management of real estate for others, and the negotiations of loans thereon; and to engage in and carry on any other business which may be conveniently conducted in conjunction with any of the business of the Corporation;

(3) To purchase, lease, hire, and otherwise acquire, hold, own, develop, improve, or dispose of and to aid or subscribe towards the acquisition, development and improvement of any personal property and rights or privileges therein suitable or convenient for any of the business of the Corporation;

(4) To purchase or otherwise acquire, and own or manage the whole or any part of the business property, good will, and assets of any company carrying on or proposing to carry on any business which this Corporation is authorized to carry on or which can be conveniently carried on in connection with the same or which may seem directly or indirectly to benefit this Corporation, or suitable for the purposes of this Corporation, and particularly to acquire certain real estate and personal property of the Washington, Baltimore and Annapolis Electric Railroad Company, and as the consideration or part of the consideration for the property to be acquired from the Washington, Baltimore and Annapolis Electric Railroad Company, or any other property acquired, to give or issue cash or its shares of stock or debentures or securities of this or any other company that may be agreed upon; and to hold and retain, or sell, mortgage, and generally deal with any shares, de-

bentures, and securities acquired, including the guarantee of the securities or obligations of any other company;

(5) To raise or borrow money and to secure the payment of money by the issue of or upon debentures, bonds or other obligations charged or not charged upon, or by mortgage, charge, hypothecation, lien, or pledge of the whole or any part of the property, assets, and rights of the Corporation;

(6) To purchase shares of its stock of any class, the power to so purchase being hereby expressly given and authorized upon such terms and conditions as the Board of Directors may from time to time determine or establish in any manner now or hereafter authorized or permitted by law;

9 (7) To carry on generally any business or trade incident to or connected with any of the activities of the Corporation which are lawful in the place where such business shall be carried on, the Corporation hereby availing itself of all the advantages and privileges accorded to a business corporation by the General Laws of the State of Maryland;

(8) And in general to exercise and enjoy all of the powers, rights, and privileges granted to or conferred upon corporations of this character by the General Laws of this State now or hereafter in force, the enumeration of certain powers as herein specified not being intended to exclude or constitute a waiver of any such powers, rights, and privileges.

Fourth.—The post office address of the place at which the principal office of the Corporation in this State will be located is Maryland Trust Company, Maryland Trust Building, Calvert and Redwood Streets, Baltimore, Maryland. The Resident Agent of the Corporation is Robertson Griswold, whose post office address is Maryland Trust Company, Maryland Trust Building, Calvert and Redwood Streets, Baltimore, Maryland. Said Resident Agent is a citizen of the State of Maryland and actually resides therein.

Fifth.—The Corporation shall have five directors, which number, however, may be increased or decreased from time to time in such lawful manner as the bylaws may from time to time provide, provided, however, the number of directors shall never be less than three. Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, T. Stockton Matthews, and Julian S. Stein shall act as directors until the first annual meeting of the stockholders or until their successors are duly chosen and qualified.

10 Sixth.—The total amount of the authorized capital stock of the Corporation is six thousand eight hundred (6,800) shares of no par value, all of which shares are common stock.

Seventh.—The Board of Directors of the Corporation is hereby empowered to authorize the issuance from time to time of shares of its stock of any class, whether now or hereafter authorized,

and securities convertible into shares of its stock of any class, whether now or hereafter authorized, for such consideration or considerations as the Board of Directors may deem advisable, subject to such limitations and restrictions, if any, as may be set forth in the Bylaws of the Corporation.

Without in any way limiting the generality of the foregoing, the Board of Directors of the Corporation is hereby further empowered to authorize the issuance from time to time of not exceeding six thousand eight hundred (6,800) fully paid and nonassessable shares without par value of the capital stock of the Corporation, in such proportions and at such rates and upon such considerations as the Board of Directors may deem advisable, subject to such limitations and restrictions, if any, as may be set forth in the Bylaws of the Corporation for the property, real and personal, of the Washington, Baltimore and Annapolis Electric Railroad Company, Terminal Real Estate Company and the Maryland Development Company purchased by the Bondholders' Protective Committee representing the holders of certain of the First Mortgage Five Per Cent. Thirty Year Gold
11 Bonds of the Washington, Baltimore and Annapolis Electric Railroad Company, this Corporation being formed and organized primarily for the purpose of acquiring, holding, and liquidating said real and personal property.

The Board of Directors is hereby given the further power and authority in its sole discretion to from time to time sell, mortgage, or hypothecate, any or all of the assets or property of the Corporation, upon such terms and conditions as to it shall deem advisable and proper.

In witness whereof, we have signed this Certificate of Incorporation on the 30th day of September 1935.

(Signed) LAWRENCE PERIN,
(Signed) BRADLEY T. J. METTEE, Jr.,
(Signed) ARTHUR E. GRIFFITH.

Witness as to each:
(Signed) HELEN G. JAMES.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 30th day of September 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Lawrence Perin, Bradley T. J. Mettee, Jr., and Arthur E. Griffith, and severally acknowledged the foregoing Certificate of Incorporation to be their act.

As witness my hand and seal the day and year last above written.

[NOTARIAL SEAL]

HELEN G. JAMES,
Notary Public.

12 The Chairman then presented to the meeting a form of Bylaws for the Corporation, which bylaws were read, considered and approved section by section, and ordered spread upon the minutes of this meeting, which is accordingly done in the words and figures following:

BYLAWS WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION.

Article I.—Meeting of Stockholders

SECTION 1.—The annual meeting of the stockholders of this Corporation shall be held at the principal office of the Corporation in the City of Baltimore, State of Maryland, on the fourth Monday in January of each year at 11 o'clock a. m., unless such day be a holiday, and then on the next succeeding business day thereafter. Not less than ten days' written notice of the annual meeting shall be given by the Secretary or President of the Corporation to each stockholder of record, said notice to be mailed to the last known address of such stockholder as it appears upon the books of the Corporation. At the annual meeting the stockholders will elect the Directors of the Corporation to serve for one year and until their successors shall be duly chosen and qualified. The annual meeting shall be a general meeting open for the transaction of any business within the powers of the Corporation.

SECTION 2.—Special meetings of the stockholders may be called and held upon ten days' written notice, as provided in Section 1 of these bylaws, by the President or a majority of the Board of Directors or by the holders of a majority of all the shares of stock outstanding and entitled to vote. Upon the request in writing delivered to the President or Secretary or any Director by the holders of a majority of all the shares outstanding and entitled to vote, it shall be the duty of the President, Secretary or such Director to call forthwith a meeting of the stockholders. Such request shall state the purpose of the meeting, and notice thereof shall be given as required by this and the next
13 preceding Section. All notices of special meetings of stockholders shall specify the object or purpose of the proposed special meeting.

SECTION 3.—At all meetings of stockholders the holders of a majority of the total amount of stock issued and outstanding, represented in person or by proxy, shall constitute a quorum, and all questions shall be decided by a majority of the votes cast. The holder of each share of stock entitled to vote shall be entitled to one vote for each share so held.

Article II.—Board of Directors

SECTION 1.—The Board of Directors shall consist of five members who shall be elected at the annual meeting of stockholders and they shall serve for one year and until their successors are duly elected and qualified. The Board of Directors, however, shall have full power and authority to from time to time increase or decrease the number of directors provided, however, the total number of directors shall never be less than three nor more than nine. The number of directors of the Corporation shall be established from time to time by resolution of the Board, subject to change in number by the stockholders at any annual meeting.

SECTION 2.—The Board of Directors, by the vote of a majority of the then members of the Board, may fill vacancies on the Board created by any increase in the number of directors or by the death, resignation, or inability to act of any director. Directors elected by the Board to fill vacancies shall serve until the next annual meeting of stockholders or until their successors are duly elected and qualified.

SECTION 3.—Upon the adoption of these bylaws and thereafter annually upon the adjournment of the annual meeting of stockholders, the Directors elected shall meet and elect a President, a Vice President, a Secretary and a Treasurer. Any two offices except those of President and Vice President may be held by the same person. The Board of Directors may, from time to time, elect or appoint an Assistant Secretary or an Assistant Treasurer, and such other officers or agents as it may from time to time deem advisable. Such officers or agents so to be elected or appointed shall have and perform such duties as may be prescribed by the Board of Directors or as may be customarily performed by persons holding similar office in corporations of a similar kind.

14 SECTION 4.—Regular meetings of the Board of Directors may be held without notice at such time or times and at such place or places as may be prescribed by resolutions of the Board of Directors.

SECTION 5.—Special meetings of the Board of Directors may be called by the President or a majority of the members of the Board upon two days' notice in person or by writing given to each director. Notices of special meetings need not specify the object of the proposed meeting.

SECTION 6.—A majority of the Board of Directors as constituted from time to time shall constitute a quorum for the transaction of business.

SECTION 7.—During the absence or inability of any officer, the Board of Directors may delegate his powers and duties to any other officer or to any director.

SECTION 8.—At all Directors' and Stockholders' meetings, insofar as the same may be applicable, the order of business shall be as follows:

1—Roll call;
2—Reading of minutes of previous meeting;
3—Reports of officers and committees;
4—Deferred business;
5—New business;
6—Adjournment.

Article III—Officers

SECTION 1.—It shall be the duty of the President to preside at all meetings of the stockholders and the Board of Directors, to have general supervision and management of the affairs of the Corporation, to see to the performance of their duties by the officers and employees of the Corporation, and to perform all other acts incidental to his office. He shall, jointly with the Treasurer or Secretary, sign all certificates of stock. He shall sign all deeds, contracts, agreements, and other instruments on behalf of the Company which may require his signature. He shall cause the same to be duly acknowledged, causing the corporate seal to be affixed thereto, and attested by the Secretary. He shall have the power to appoint and remove all persons engaged in the services of the Corporation except officers elected by the Board of Directors and to fix the compensation and define the duties of such employees and officers, except where such compensation may be fixed by the Board of Directors. At the annual meeting of stockholders he shall present a report as to the condition of the Company during the preceding year.

SECTION 2.—The Vice President shall be vested with all the powers and required to perform all the duties of the President in the absence or inability of the latter to act. He shall also have the power jointly with the Treasurer or Secretary to sign certificates of stock. He shall have power to sign all deeds, contracts, agreements, and other instruments on behalf of the Corporation, and shall cause the same to be acknowledged and the corporate seal to be affixed, attested by the Secretary, or Assistant Secretary.

SECTION 3.—The Treasurer shall have general charge of the finances of the Corporation, subject to the supervision of the President, and the safekeeping of valuables and securities. He shall deposit to the credit of the Company all moneys coming into his hands, in such bank or banks as the Board of Directors

may direct. The Treasurer shall have power, jointly with the President or Vice President, to sign all certificates of stock. If required by the Board of Directors, the Treasurer shall give bond for the faithful performance of his duties with such surety as may be approved by the Board of Directors.

SECTION 4.—The Secretary shall keep the minutes of the directors' and stockholders' meetings, shall see that the proper notices are sent or given of all meetings of stockholders and directors, shall have the custody of the seal of the Company, and shall attest the same when affixed to legal instruments properly executed on behalf of the Company. He shall have power, jointly with the President or Vice President, to sign all certificates of stock. The Secretary shall have general supervision of the accounts of the different departments of the Corporation, shall verify the same, and when requested shall report to the President or Board of Directors. The Secretary shall have charge of the transfer of stock and shall have the custody of the original stock ledger and transfer book.

Article IV—Checks, Notes, etc.

SECTION 1.—All checks, notes, drafts and bills of exchange shall be signed by any two of the officers of the Corporation, and when so signed shall be the legal and binding obligations of the Corporation.

16

Article V—Transfer of Stock

SECTION 1.—Transfers of stock shall be made on the books of the Corporation either by the holders in person or by their duly authorized attorney, and shall be entered in a book kept for that purpose in the office of the Corporation.

Article VI—Seal

SECTION 1.—The seal of the Corporation shall be circular in form with the name of the Corporation printed around the circumference, the seal impressed on the margin hereof being hereby adopted as the corporate seal of the Corporation.

Article VII—Amendments

SECTION 1.—The Board of Directors shall have the power to make, alter, and repeal additional and supplementary bylaws not inconsistent with any of the bylaws adopted by stockholders, but any such additional or supplementary bylaws may be altered or repealed by the stockholders. Any of the bylaws of the Cor-

poration may be altered, amended, repealed, and reenacted in whole or in part by the stockholders at any special or at any annual meeting by a majority of the stock represented at any stockholders' meeting at which a quorum is present, provided that at any special meeting the stockholders shall have been previously notified of the intention to alter, amend, repeal, or reenact said bylaws in whole or in part.

The Chairman thereupon called for nominations for the offices of President, Vice President, Secretary and Treasurer. Thereupon, Mr. Heyward E. Boyce was nominated as President, Mr. Simon J. Block was nominated as Vice President, and Mr. Robertson Griswold was nominated as Secretary and Treasurer.

17 There being no other nominations, said nominees were declared unanimously elected to the respective offices to which they had been nominated, to serve until the next annual meeting of the Board of Directors and until their successors are duly elected and qualified.

Thereupon, upon motion duly made and seconded, the Maryland Trust Company was named as the depositary of the funds of the Corporation.

The Chairman stated that it would be necessary for the Board to take formal action in connection with the taking over and acquiring all of the first mortgage five percent gold bonds of the Washington, Baltimore and Annapolis Electric Railroad deposited with the Protective Committee representing such bonds, together with the various properties, real and personal, purchased by that Committee at the time of the sale at public auction of the property and assets of that Railroad Company; this Corporation having been incorporated and organized for the purpose of succeeding and stepping into the place of the Bondholders' Protective Committee, so as to more simply and expeditiously hold and liquidate as promptly as possible the properties so purchased. The Chairman stated further that it was proposed to have the properties purchased conveyed by the Special Master and Receiver direct to this Corporation and to issue to each bondholder who deposited his bonds with the Committee one share of no

18 par value stock for each $1,000 par value bond of the Washington, Baltimore and Annapolis Electric Railroad Company so that there would be issued and outstanding 6,726 shares, $6,726,000 par value of bonds having been deposited with the Committee out of a total issue of $7,308,000. That it had been deemed advisable to deposit all of the issued shares in a voting trust and to issue to the depositing bondholders through the Protective Committee voting trust certificates in lieu of stock cer-

tificates and upon the completion of the distribution by the Bondholders' Protective Committee, to dissolve it.

Thereupon, upon motion duly made and seconded and unanimously carried, it was

Resolved, that in pursuance of the purposes for which this Corporation was incorporated and organized, this Corporation acquire $6,726,000 par value of first mortgage five percent gold bonds of the Washington, Baltimore and Annapolis Electric Railroad Company, and all rights and property appurtenant thereto, including the following:

(1) Parcel 8 (a) of the public sale of the Washington, Baltimore and Annapolis Electric Railroad Company, comprising all the land and improvements thereon located in and around Naval Academy Junction; and

(2) Parcel 9 (a) of said public sale, comprising all the land and improvements thereon located at the southwest corner of Howard and Lombard Streets, Baltimore, formerly used as a terminal by said Railroad Company; and

(3) Parcel 10 (a) of said public sale, comprising all the land and improvements thereon located between Eleventh and Twelfth Streets and New York Avenue, Washington, formerly used as a terminal by said Railroad Company; and

(4) Parcel 10 (b) of said public sale, comprising all the land and improvements thereon located at the corner of Bladensburg and Bennings Roads, North East, Washington, formerly used as a terminal by said Railroad Company; and

(5) Parcel 11 (a) of said public sale, comprising the land and improvements thereon located at the corner of West and Calvert Streets, Annapolis, formerly used as a terminal by said Railroad Company; and

(6) Parcel 11 (b) of said public sale, comprising the land and improvements thereon located in front of the station of the Baltimore and Annapolis Railroad, and fronting on College Avenue and Bladen Street, Annapolis; and

(7) Parcel 12 of said public sale, comprising ten shares of stock of Terminal Real Estate Company of Baltimore City and four hundred shares of stock of Maryland Development and Realty Company of Anne Arundel County, being all of the outstanding shares of stock of said companies; and

(8) Parcel 14 of said public sale, comprising all of the right, title, and interest of said Washington, Baltimore and Annapolis Electric Railroad Company, in and to the several parcels of real estate, whether owned in fee, under lease, or conditionally, or otherwise, constituting the roadbed of said railroad, and all other separate pieces of real estate or interest

in real estate owned by said railroad, with the exception of the real estate described in Parcels 9, 10, and 11 of said public sale.

That in acquiring the foregoing property and all rights appurtenant thereto, this Corporation will assume and pay all liabilities accrued or to accrue, incurred or to be incurred, by the Bondholders' Protective Committee representing the first mortgage five percent Gold Bonds of the Washington, Baltimore and Annapolis Electric Railroad Company deposited with it.

Resolved further, that the issuance of six thousand seven hundred and twenty-six fully paid and nonassessable shares without par value of the stock of the Corporation for the consideration set forth in the preceding resolution, be and the same is hereby authorized.

Resolved further, that in compliance with the laws of the State of Maryland, the Board of Directors states that in its opinion the actual value of said consideration is not less than four hundred and forty thousand three hundred and fifty dollars.

21 There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

22 STATE TAX COMMISSION

UNION TRUST BUILDING

Baltimore, Md.

Messrs. SEMMES, BOWEN & SEMMES,
Baltimore Trust Bldg., Baltimore, Md.

GENTLEMEN: You are advised that the Stock Issuance Statement of "Washington, Baltimore and Annapolis Realty Corporation" has been received and approved by the State Tax Commission of Maryland this 20th March 1936, and will be recorded.

The receipt of payment of the following fees due on account thereof is hereby acknowledged. Recording Fee, $5.00.

STATE TAX COMMISSION OF MARYLAND,
by O. M.

23 WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

STOCK ISSUANCE STATEMENT

This is to certify:

FIRST.—That the Board of Directors of Washington, Baltimore and Annapolis Realty Corporation, a Maryland corporation having

its principal office in the City of Baltimore, Maryland, at a meeting duly convened and held on October 16th, 1935, adopted the following resolution:

Resolved, that in pursuance of the purposes for which this Corporation was incorporated and organized, the Corporation acquire $6,726,000 par value of first mortgage five percent gold bonds of the Washington, Baltimore and Annapolis Electric Railroad Company, and all rights and property appurtenant thereto, including the following:

(1) Parcel 8 (a) of the public sale of the Washington, Baltimore and Annapolis Electric Railroad Company, comprising all the land and improvements thereon located in and around Naval Academy Junction; and

(2) Parcel 9 (a) of said public sale, comprising all the land and improvements thereon located at the southwest corner of Howard and Lombard Streets, Baltimore, formerly used as a terminal by said Railroad Company; and

(3) Parcel 10 (a) of said public sale, comprising all the land and improvements thereon located between Eleventh and Twelfth Streets and New York Avenue, Washington, formerly used as a terminal by said Railroad Company; and

(4) Parcel 10 (b) of said public sale, comprising all the land and improvements thereon located at the corner of Bladensburg and Bennings Roads, North East, Washington, formerly used as a terminal by said Railroad Company; and

(5) Parcel 11 (a) of said public sale, comprising the land and improvements thereon located at the corner of West and Calvert Streets, Annapolis, formerly used as a terminal by said Railroad Company; and

(6) Parcel 11 (b) of said public sale, comprising the land and improvements thereon located in front of the station of the Baltimore and Annapolis Railroad, and fronting on College Avenue and Bladen Street, Annapolis; and

24 (7) Parcel 12 of said public sale, comprising ten shares of stock of Terminal Real Estate Company of Baltimore City and four hundred shares of stock of Maryland Development and Realty Company of Anne Arundel County, being all of the outstanding shares of stock of said companies; and

(8) Parcel 14 of said public sale, comprising all of the right, title, and interest of said Washington, Baltimore and Annapolis Electric Railroad Company, in and to the several parcels of real estate, whether owned in fee, under lease, or conditionally, or otherwise, constituting the road bed of said Railroad, and all other separate pieces of real estate or interest in real estate owned

by said Railroad, with the exception of the real estate described in Parcels 9, 10, and 11 of said public sale.

That in acquiring the foregoing property and all rights appurtenant thereto this Corporation will assume and pay all liabilities accrued or to accrue, incurred or to be incurred, by the Bondholders' Protective Committee representing the First Mortgage Five Per Cent Gold Bonds of the Washington, Baltimore and Annapolis Electric Railroad Company deposited with it.

Resolved further, that the issuance of six thousand seven hundred and twenty-six fully paid and nonassessable shares without par value of the stock of the Corporation for the consideration set forth in the preceding resolution, be and the same is hereby authorized.

Resolved further, that in compliance with the laws of the State of Maryland, the Board of Directors states that in its opinion the actual value of said consideration is not less than four hundred and forty thousand three hundred and fifty dollars.

SECOND.—That at the time of the authorization of the issuance of such stock by the Board of Directors as aforesaid, there were no shares of stock of the Corporation outstanding and entitled to vote thereon.

In witness whereof, Washington, Baltimore and Annapolis Realty Corporation has caused these presents to be signed in its name and on its behalf by its President, and its corporate seal to be hereto affixed and attested by its Secretary on this 16th day of March 1935.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

By HEYWARD E. BOYCE, *President.*

Attest:

ROBERTSON GRISWOLD, *Secretary.*

State of Maryland, City of Baltimore, to wit:

I hereby certify that on the 16th day of March 1935, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Heyward E. Boyce, President of Washington, Baltimore and Annapolis Realty Corporation, a Maryland corporation, and in the name and on behalf of the Corporation acknowledged the foregoing Statement to be the corporate act of the Corporation. And at the same time personally appeared Arthur E. Griffith and made oath in due form of law that he was Secretary of the meeting of the Board of Directors of the Corporation at which the issuance of the stock therein mentioned was authorized, and that the matters and facts set forth in said statement are true to the best of his knowledge, information, and belief.

Witness my hand and Notarial Seal the day and year last above written.

[NOTARIAL SEAL] CLARENCE B. CLEMENTS,
Notary Public.

26 A special meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Tuesday, October 29th, 1935, at 11.30 o'clock a. m.

There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, T. Stockton Matthews, and Julian S. Stein, constituting the entire Board of Directors.

The President of the Corporation presided and the Secretary of the Corporation acted as Secretary of the meeting.

The President stated that the meeting had been called for the purpose of authorizing the officers of the Company to enter into a lease with one Arthur G. Dezendorf of the District of Columbia, covering the entire property of the Corporation located at 12th Street, New York Avenue, I Street and 11th Street, North West, Washington, D. C. A copy of the lease was presented to the Board and after discussion it was, upon motion duly made, seconded and unanimously carried.

Resolved, that this Corporation enter into a lease for that property situate in the City of Washington, District of
27 Columbia, between 12th Street, New York Avenue, I Street and 11th Street and north of the property of the Annapolis Hotel, being that property conveyed to this Corporation by Louis J. Burger, Special Master, and George Weems Williams, Receiver, by deed dated October 22nd, 1935, to Arthur G. Dezendorf for the term of five years commencing on the first day of January 1936, and ending on the 31st day of December 1940, for the aggregate rental of said term of one hundred and twenty five thousand dollars ($125,000), but subject to the rights of this Corporation to terminate said lease in the event it shall secure a bona fide purchaser for said premises or a bona fide offer to rent the same for the term of twenty or more years, upon giving to Arthur G. Dezendorf a ninety days' written notice of the securing of such purchaser or tenant, and the form of said lease submitted to this meeting be and the same is hereby approved; and

Be it further resolved, that the President and Secretary of this Corporation be and they are hereby authorized to execute said lease in the name and behalf of this Corporation, and that Heyward E. Boyce, the President, be and he is hereby appointed attorney-in-fact to acknowledge the same as the act and deed of this Corporation and to deliver the same.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

28 A special meeting of the Board of Directors of Washington Baltimore and Annapolis Realty Corporation was held in the Board room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Monday, February 24th, 1936, at 11:30 o'clock a. m.

There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, T. Stockton Matthews, and Julian S. Stein, constituting the entire Board of Directors.

Mr. Boyce, President of the Company, presided and Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The President stated that the Company had acquired all of the outstanding stock of the Maryland Development and Realty Company of Anne Arundel County consisting of four hundred (400) shares, and of the Terminal Real Estate Company of Baltimore City consisting of ten (10) shares, and it would be necessary for this Company to give proxies so that it might be represented at the stockholders' meetings, both general and special, of both Companies.

Thereupon, upon motion duly made, seconded, and unanimously adopted, it was

29 Resolved, that the President or Vice President and Secretary of this Company execute proxies in the usual form running to Heyward E. Boyce and Robertson Griswold, or either of them, to fully represent this Corporation as proxies at general or special meetings of stockholders of the Terminal Real Estate Company of Baltimore City and the Maryland Development and Realty Company of Anne Arundel County, said proxies to be good until revoked by the Board.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that the action of the officers of this Corporation in releasing Arthur G. Dezendorf from his liability to the full extent of twelve thousand six hundred and seventy-five dollars ($12,675.00) under the lease with him dated October 30, 1935, and accepting a surrender of a portion of the property covered by said lease to the extent of three thousand two hundred and fifty (3,250) square feet located at the southwest corner of I Street and 14th Street North West, Washington, D. C., and in entering into a lease with the Gulf Refining Company for the property so surrendered, be and the same is hereby ratified, approved, and

adopted, copies of the written surrender and lease having been submitted to this meeting and ordered filed with the records of the Corporation.

Thereupon, upon motion duly made and seconded and unanimously carried, it was

Resolved, that the Corporation sell the property located on Calvert, West, and Washington Streets, in the City of Annapolis, at and for the sum of twenty-three thousand dollars ($23,000), and upon the payment of the purchase price therefor, the proper officers of the Corporation are authorized and empowered to execute and deliver to the purchaser a good and sufficient deed therefor, provided, however, there shall be reserved in said deed, in form and terms satisfactory to counsel of the Corporation, a right-of-way across the rear of the property in front of the warehouse of Henry Meyers & Company and running from Calvert Street through to Washington Street.

Further resolved, that the Corporation sell and convey to the Pennsylvania Railroad all of its right, title, and interest in and to that portion of the right-of-way of the Washington, Baltimore, and Annapolis Electric Railroad extending from a point not more than two hundred feet west of Odenton, through Naval Academy Junction to a point where the main line meets the Pope's Creek Branch of the Pennsylvania Railroad; and that the Corporation acquire from the Boston Iron and Metal Company, Inc., tracks, rails, ties, angle bars, and steel and wooden bridges for a single track over that portion of the above-mentioned right-of-way from the dividing point of the Y track at Odenton to a point one thousand feet south of the Southerly Y track leading to the Bowie Race Track in Prince Georges County, said rails, angle bars, ties, and bridges to be in turn sold to the Pennsylvania Railroad in connection with the sale of the right-of-way, said sale to the Pennsylvania Railroad to be at a consideration of not less than thirty thousand dollars ($30,000) cash.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company on Wednesday, March 18th, 1936, at 11:30 o'clock a. m. There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and Julian S. Stein, constituting more than a majority of the Board.

Mr. Boyce, President of the Company, presided and Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The President stated that in connection with the sale to the Pennsylvania Railroad, counsel of that Company had requested certain formal resolutions be passed by this Board. A copy of the resolutions being presented to the meeting, it was duly moved, seconded, and unanimously carried:

Resolved, that the sale to the Pennsylvania Railroad of all of the right, title, and interest of the Bondholders' Protective Committee and of the Washington, Baltimore, and Annapolis Realty Corporation in the hereinafter described property for the sum of thirty thousand dollars ($30,000), is hereby authorized, ratified, and approved.

33 The right-of-way of the Washington, Baltimore and Annapolis Electric Railroad Company beginning at a point approximately two hundred feet West of the center line of the P. B. & W. R. R. at Odenton Station and extending therefrom along the right-of-way of the Fort George G. Meade and the South Shore Division of the former W. B. & A. E. R. R. to Naval Academy Junction; thence extending Southerly along the right-of-way of the Main Line Division of the said W. B. & A. E. R. R. to and across the right-of-way of the Pope's Creek Branch of the P. B. & W. R. R., said right-of-way to include a continuous single track railway, including rails, ties, fittings, bridges, etc., commencing at the point of switches of the North Y track at Odenton and extending therefrom to a point one thousand feet South from the South Y track at the property of the Southern Maryland Agricultural Association including Y tracks thereat, as far as the right-of-way line, but exclusive of any switches or cross-overs, but inclusive of the two turn-outs in the Y tracks at the Agricultural Association property.

Resolved further, that immediate full possession of the above described property be given to the purchaser, so that the necessary work may be done to put the property in operating condition and principally for service to and from the Bowie Race Track at its April Meet.

It was announced by the President that out of the purchase price to be received from the Pennsylvania Railroad it would be necessary to pay the Boston Iron and Metal Company approximately twenty two thousand dollars ($22,000) for the rails, ties, etc. included in the above sale.

After some discussion and due consideration a sale was authorized to be made to the Baltimore and Annapolis Railroad Company for thirty seven thousand dollars ($37,000) of

34 the following properties, some of which are owned by this Company and some being owned by the Terminal Real Estate Company:

Main Line right-of-way to a point beyond Maple Avenue at Linthicum	$20,000.00
Linthicum Substation	3,000.00
Trackage on Clifford and Western Maryland Interchange	3,000.00
Land in the Clifford and Western Maryland Interchange	10,000.00
Trackage at Lipthicum	1,000.00

Permission was granted to the Annapolis Metropolitan Sewerage Commission to lay a sewer under the South Shore right-of-way on such terms and conditions as might be approved by counsel.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

35 A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Wednesday, June 17th, 1936, at 11.00 o'clock a. m.

There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., T. Stockton Matthews, and Julian S. Stein, constituting the entire Board.

Mr. Boyce, President of the Company, presided, and Mr. Griswold, Secretary of the Company, acted as Secretary of the meeting.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that the Company sell to the Consolidated Gas Electric Light and Power Company for seven hundred and fifty dollars ($750) approximately five acres of land at Cedar Park Station near Annapolis, the land to be sold not to encroach upon or interfere with the South Shore right-of-way into the City of Annapolis.

Further resolved, that a perpetual easement over the Company's property at Naval Academy Junction be granted to
36 the Gas Company for its transmission wires, etc., said easement to be seventy-five feet wide and approximately four hundred and fifty seven feet long; the consideration therefor to be the sum of five hundred dollars to be paid by the Gas Company and the terms of the easement to be satisfactory to the counsel of the Company.

Be it further resolved, that this Company, together with the Terminal Real Estate Company, sell at five thousand dollars ($5,000) the strip of property about five hundred feet long facing the Baltimore and Ohio Railroad tracks between Bush and Bayard Streets, containing about nine-tenths of an acre.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD.
Secretary.

37 A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Monday, November 30, 1936, at 11:30 o'clock a. m.

There were present: Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., T. Stockton Matthews, and Julian S. Stein, constituting the entire Board of Directors.

Mr. Boyce, President of the Company, presided, and Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The President stated that the final reports of the Receiver of the W. B. & A. E. R. R. Company and also the report of The Cleveland Trust Company, Trustee, had been approved and ratified by the United States District Court for the District of Maryland, and that this Company and the Bondholders' Protective Committee had been called upon to surrender to The Cleveland Trust Company, Trustee, all bonds which had been deposited with it through the Maryland Trust Company and the Cleveland Trust Company, depositaries; that the bonds had been shipped to the Trustee for surrender and cancellation; and that there had
38 been received from the Trustee four hundred thirty two thousand eight hundred sixty-nine dollars and sixty-five cents ($432,869.65). It was suggested a cash distribution would be in order and that the time had arrived for the actual issuance of stock of the Company which had heretofore been authorized. The President presented to the meeting a copy of a proposed letter to be sent to the holder of certificates of deposit representing the First Mortgage Five Per Cent. Thirty Year Gold Bonds of the W. B. & A. E. R. R. Company, there being attached to the proposed letter a combined or condensed statement of receipts and expenditures of the Protective Committee of this Company, of the Terminal Real Estate Company of Baltimore City, and of the Maryland Development and Realty Company of Anne Arundel County, the statement showing net receipts of six hundred thirteen thousand five hundred ten dollars and two cents ($613,510.02) and total disbursements of two hundred fifty-one thousand six hundred fifty-six dollars and ninety-four cents ($251,656.94), leaving a balance of three hundred sixty-one thousand eight hundred fifty-three dollars and eight cents ($361,853.08).

After consideration of the letter and statement, the following resolutions were moved, seconded, and unanimously adopted.

Resolved, that the Circular letter presented to this meeting proposed to be sent to the holders of certificates of deposit representing the First Mortgage Five Per Cent Thirty Year Gold Bonds of the W. B. & A. E. R. R. Company, be and the same is hereby approved and that said letter be sent out to the holders of such certificates at their respective addresses as they appear on the books of the Depositaries.

Be it further resolved, that the combined or condensed statement presented to the meeting be and the same is hereby approved and that the sum of twenty-five thousand five hundred fifty-three dollars and eight cents ($25,553.08) be reserved out of the capital assets and a distribution at the rate of fifty dollars ($50) per one thousand dollar ($1,000) bond, amounting to a total of three hundred thirty-six thousand three hundred dollars ($336,300) be made to the holders of certificates of deposit; said distribution to be by way of a distribution of all income and such an amount of capital assets as shall be necessary to make up the difference between all of the income and the total amount to be distributed to the certificate holders at the rate of fifty dollars ($50) per one thousand dollar ($1,000) bond.

Be it further resolved, that a copy of the combined or condensed statement of receipts and expenditures presented to this meeting and approved, be attached to and mailed with the above-mentioned letter to be sent to the certificate holders, and that the officers of the Company be and they are authorized and directed to make the necessary adjustments on the books of the three Companies to perfect such distribution; and they are also authorized and directed to attach whatever Federal Revenue Stamps may be required to be attached by this Company to the certificate of stock representing six thousand seven hundred twenty-six (6,726) shares as an original issue, and any stamps which may be required to be attached by this Company on account of any transfer thereof.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

HEYWARD BOYCE.
SIMON J. BLOCK.
JOHN C. LEGG, JR.
T. STOCKTON MATTHEWS.
JULIAN S. STEIN.

41 A special meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Thursday, December 17, 1936, at 11:45 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., T. Stockton Matthews and Julian S. Stein, constituting the entire Board of Directors.

There were also present Mr. Jesse N. Bowen, of counsel for the Corporation, and Mr. W. Watters Pagon, of The Industrial Corporation.

Mr. Boyce, President of the Company, presided, and Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The appointments heretofore made by the President of the Corporation of the law firm of Semmes, Bowen & Semmes as counsel to the Corporation, and of The Industrial Corporation as the consulting engineers to the Corporation, were ratified and confirmed.

Mr. Bowen stated that there was an oil tank, belonging to Mr. James Rittenhouse, Jr., on a portion of the Terminal Real Estate Company property at North Linthicum, and that Mr. Rittenhouse had expressed a desire to purchase the land upon which the tank was erected, for which land he was at present paying a nominal rental of $1 per annum. The Board decided that this property should not be sold, but that Mr. Rittenhouse could continue to use the property for his oil tank as a monthly tenant at a nominal rental of $1 per month.

With regard to the right-of-way from Fort Meade Junction to within approximately 200 feet of the Pennsylvania Railroad tracks, the sale of which to the Baltimore & Ohio Railroad
42 Company, at a price of $8,000, had been heretofore authorized by the Bondholders' Protective Committee, Mr. Bowen announced that the Baltimore & Ohio Railroad Company had requested the W. B. & A. Realty Corporation to waive interest on the purchase price, said interest amounting to approximately $240. Upon motion duly made, seconded, and unanimously carried, Mr. Bowen was authorized to waive said interest and to conclude the sale at the said price of $8,000.

Upon motion duly made, seconded, and carried, the Board authorized the sale to Mrs. A. G. Cook of the station house and freight shed at Waterbury, at a price of $25.

Upon motion duly made, seconded, and carried, Mr. Pagon was authorized to sell, at such a price as he might deem reason-

able, any of the station houses on the South Shore line, without any further authorization from the Board of Directors, provided that no such sales should be made without submitting the same to the Board for its approval where the fair value of any such station house exceeded the sum of $250.

Upon motion duly made, seconded, and carried, the Board authorized the posting of "No Trespassing" signs on the rights-of-way belonging to the Corporation, and the taking out, in reasonable amounts, of liability insurance to protect the Corporation, growing out of the ownership of said rights-of-way.

Mr. Pagon announced that Mr. Joseph D. Lazenby had offered to purchase the substation at Annapolis for $6,500, provided he could obtain access to West Street and Washington Street. Mr. Pagon stated that as a counter suggestion he had offered Mr. Lazenby a right-of-way over our property either to Washington Street or to Pleasant Street, with the right reserved on our part to change at any time the method of access to the property.

43 Upon motion duly made, seconded, and carried, the Board approved the sale of the property to Mr. Lazenby for $6,500, less one-half of a 5% commission, making a net price of $6,337.50, the matter of the access to the property to be worked out by Mr. Pagon and to be subject to his approval.

Mr. Bowen stated than Mr. Edgar Allen Poe, representing the Baltimore and Annapolis Railroad, had renewed his offer of $5,000 for our right-of-way from Washington Street, Annapolis, to Sims Crossing, or $10,000 for our right-of-way from Washington Street to Crownsville. Mr. Bowen stated that Mr. Poe had said that unless his offer was accepted, he was prepared to commence condemnation proceedings. Mr. Bowen further stated that Mr. Dulin, representing the County Commissioners for Anne Arundel County, and a member of the County's delegation in the Maryland Legislature, had stated that the County Commissioners would be interested in obtaining a price from us on the right-of-way from Linthicum to Naval Academy Junction, thence to the District of Columbia Line, and also on our right-of-way from Odenton to Naval Academy Junction, thence to Annapolis, the County Commissioners having in mind the submission of a bill in January to the Maryland Legislature by which they hope to secure authority for a bond issue to take care of the purchase price if the figures named by us were acceptable. After discussion, it was moved, seconded, and carried that Mr. Bowen be authorized to offer the right-of-way from Washington Street, Annapolis, to Crownsville, to the Baltimore & Annapolis Railroad Company at a price of $15,000, subject to acceptance by the

Baltimore & Annapolis Railroad Company prior to February 1, 1937.

Mr. Bowen stated that he had offered to divide equally with the Gas Company the cost of the title examination to the South
44 Shore line right-of-way, and upon motion duly made, seconded, and carried, this action on the part of Mr. Bowen was approved.

Mr. Bowen announced that the Capital Transit Company might be interested in purchasing the back end of the lot at the White House Terminal, at 15th & "H" Streets, Washington, D. C., and that our real estate advisers had placed a valuation on this property of $2 per square foot. Mr. Bowen further stated that if the Capital Transit Company decided to purchase this property, it would need about 57,500 square feet, and upon motion duly made, seconded, and carried, Mr. Bowen was authorized to sell this property at a price of $115,000.

Mr. Pagon announced that he had sold for $4,250 the property facing the Baltimore & Ohio Railroad tracks from Bush Street to Bayard Street, and upon motion duly made, seconded, and carried, the sale was ratified and confirmed.

Mr. Pagon further announced that he had sold to Mr. Herbert L. Bowen, for the sum of $4,500, the lot at Wooster and Bayard Streets, and upon motion duly made, seconded, and carried, the sale was ratified and confirmed.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that the Bylaws of the Corporation be amended by adding a new section to Article II, title "Board of Directors," to be known as Section 9, reading as follows:

"SECTION 9. Each Director, excluding salaried officers, shall be entitled to a director's fee of twenty dollars ($20) for each meeting attended."

The Chairman called to the attention of the Board the fact that the United States District Court in ordering a sale
45 of the property and assets of the W., B. & A. E. R. R. had included in Parcel No. 1 the former right-of-way of the Baltimore and Annapolis Short Line Railroad from Baltimore to a point below Linthicum Station in Anne Arundel County; that said right-of-way by agreement was conveyed by the Special Master to J. S. Wilson, Jr., substituted purchaser, representing the Baltimore and Annapolis Railroad, and that subsequently said right-of-way was conveyed by J. S. Wilson, Jr., to this Corporation, out of which conveyance a portion of the right-of-way was conveyed to the Baltimore and Annapolis Railroad

Company, leaving this Corporation holding the remainder of said right-of-way; that what is left of the right-of-way properly belongs to the Terminal Real Estate Company and should be conveyed to it so that title will be once more placed in the Corporation which originally owned the entire right-of-way.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that the President or Vice President and the Secretary of this Corporation convey to the Terminal Real Estate Company title to all of the remaining right-of-way formerly belonging to and used by the Baltimore and Annapolis Short Line, and that such conveyance include all strips of land, rights, etc., abutting thereon or in connection therewith, title to which were in the Terminal Real Estate Company prior to the auction sale of June 14, 1935.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

46 A meeting of the Board of Directors of the Washington, Baltimore, and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company in the City of Baltimore, State of Maryland, on Friday, January 22, 1937, at 12:15 o'clock P. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, T. Stockton Matthews, and John C. Legg, Jr., of the Board of Directors; Mr. Jesse N. Bowen, of counsel; and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board.

The reading of the minutes of the meeting held on December 17, 1936, was postponed until the next meeting of the Board.

The Secretary announced that $6,250,000 face amount of W., B. & A. Certificates of Deposit had been presented to date to the Depositary for liquidation, leaving $476,000 face amount of Certificates of Deposit still outstanding.

Mr. Bowen stated that, in connection with the proposed sale of certain property in Annapolis to the Annapolis Dairy Products Company, Mr. Lazenby had requested that the deed which had been prepared by Mr. Bowen be so amended as to give the Annapolis Dairy Products Company certain easements across our other property in that vicinity in order that the Annapolis Dairy Products Company might have access to certain streets. Mr. Bowen did not favor the granting of these easements, and it was thereupon regularly moved, seconded, and carried that Mr. Bowen be authorized to sell the property to the Annapolis Da ry

Products Company at the original price agreed upon, to wit, $6,500, but without the granting on our part of any easements to the Dairy Company.

Mr. Bowen and Mr. Pagon made a report regarding the former road-bed and right-of-way of the W., B. & A. in An-
47 napolis, and called the attention of the Directors to a letter from Mr. Edgar Allan Poe, in which he stated that he was about to commence, on behalf of the Baltimore & Annapolis Railroad Company, condemnation proceedings covering that section of said road-bed and right-of-way extending from Washington Street to Simms' Crossing, a distance of approximately 1½ miles. Mr. Bowen called the attention of the Board to an offer made some time previously to Mr. Poe to purchase our right-of-way from Washington Street to Crownsville for $10,000. Mr. Pagon stated that he felt that there was a possibility that this right-of-way could be sold for highway purposes, and the Board of Directors thereupon decided that they would take no action with regard to Mr. Poe's letter.

Mr. Pagon stated that he had granted an option for 90 days to Mr. Edgar Allan Poe, Jr., for the purchase by him of certain of our property on the west side of Russell Street, extending from the Baltimore Transit Company tracks to Gunpowder Street, the sale price to be $1,500, and upon motion duly made, seconded and carried, this action on the part of Mr. Pagon was ratified and confirmed.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that the officers of the company be paid the following annual salaries, effective as of the date of the last meeting of the Board of Directors held on December 17, 1936, and payable quarterly:

President	$1,000
Vice President	300
Secretary and Treasurer	600

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

48 Know all men by these presents: That we, the undersigned stockholders of the W., B. & A. Realty Corporation, a Maryland corporation, do hereby nominate and appoint Heyward E. Boyce and Robertson Griswold, or either of them, as and for our lawful proxies or proxy, to vote the number of shares of said Company standing in our names on the books thereof at the annual meeting of said Corporation to be held on Monday,

January 25th, 1937, at 11.00 o'clock a. m., or at any adjourned meeting thereof, upon any and all matters which may come before said meeting, as fully and completely as we might do if present in persons. We hereby ratify and confirm any and all acts done by said proxies or either of them for and on our behalf.

As witness our hands and seals this 23rd day of January 1937.

Witness:
ALLTA ALDEN.
LEON H. BLOCK.
F. FURNIVAL PEARD.
HUBERT M. WILLE.

HEYWARD E. BOYCE, [SEAL]
SIMON J. BLOCH, [SEAL]
JOHN C. LEGG, JR., [SEAL]
T. STOCKTON MATTHEWS, [SEAL]
Voting Trustees.

49 The annual meeting of stockholders of the Washington, Baltimore and Annapolis Realty Corporation was held at the principal office of the Corporation, Maryland Trust Building, in the City of Baltimore, State of Maryland, on January 25, 1937, at 11:00 o'clock A. M.

There were present Messrs. Heyward E. Boyce and Robertson Griswold, proxies representing Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, and T. Stockton Matthews, Voting Trustees under Voting Trust Agreement dated March 18, 1936, said Voting Trustees holding all of the issued and outstanding stock of the Corporation.

Mr. Block presided at the meeting and Mr. Griswold acted as Secretary.

The proxy from the Voting Trustees running to Messrs. Boyce and Griswold was filed and was ordered attached to the minutes of the meeting.

The Chairman thereupon called for nominations as Directors of the Corporation for the ensuing year until the next annual meeting of stockholders. Thereupon, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, and T. Stockton Matthews were nominated as Directors, leaving one vacancy due to the death of Julian S. Stein. There being no other nominations, the same were declared closed and the Secretary was directed to cast a unanimous ballot for all of said nominees. Such ballot having been cast, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, and T. Stockton Matthews were declared elected directors of the Corporation, to serve until the next annual meeting and until their successors are duly elected and qualified.

Upon motion duly made and seconded and unanimously carried, the action of the Board of Directors in amending the By-Laws of the Corporation by adding a new section known as Section 9 of Article II, title "Board of Directors" be and the same is hereby approved and said amendment is adopted as the action of the stockholders.

There being no further business before the meeting it adjourned.

ROBERTSON GRISWOLD,
Secretary.

Following the annual meeting of the stockholders of the Washington, Baltimore and Annapolis Realty Corporation, a meeting of the newly elected Board of Directors was held at the principal office of the Corporation, Maryland Trust Building, in the City of Baltimore, State of Maryland, on January 25, 1937, at 11:30 o'clock A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, and T. Stockton Matthews, constituting the entire Board of Directors.

Mr. Boyce acted as Chairman of the meeting, and Mr. Robertson Griswold acted as Secretary.

The Chairman thereupon called for nominations for offices of President, Vice President, Secretary, and Treasurer. Thereupon, Mr. Heyward E. Boyce was nominated as President, Mr. Simon J. Block was nominated as Vice President, and Mr. Robertson Griswold was nominated as Secretary and Treasurer. There being no other nominations, said nominees were declared unanimously elected to the respective offices to which they had been nominated, to serve until the next annual meeting of the Board of Directors and until their successors are duly elected and qualified.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

HEYWARD E. BOYCE.
SIMON J. BLOCK.
JOHN C. LEGG, JR.
T. STOCKTON MATTHEWS.

BALTIMORE, MARYLAND, *May 13, 1937.*

A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company, on Thursday, May 13, 1937, at 10:30 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors, Mr. Jesse N. Bowen, of counsel, and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board.

Mr. Boyce, President of the Company, presided, and Mr. Griswold, Secretary of the Company, acted as Secretary of the meeting.

The minutes of the meetings of the Board of Directors held on December 17, 1936, on January 22, 1937, and on January 25, 1937, were read and approved.

The Secretary announced that $6,450,000 face amount of W., B. & A. certificates of deposit had been presented to date to the Depositary, leaving $276,000 certificates of deposit still outstanding.

The Secretary stated that the cash balances in the various accounts, as of May 13, 1937, were as follows:

W., B. & A. Realty Corporation	$19,115.28
Terminal Real Estate Company	18,137.15
Maryland Development & Realty Co.	3,894.07
Total	41,146.50

The Secretary presented to the Board a bill, dated March 3, 1937, from Messrs. Semmes, Bowen & Semmes, for professional services amounting to $2,500, together with certain expenses amounting to $13.45, and upon motion duly made, seconded, and carried, payment of this bill was approved.

The Secretary presented to the Board a bill from Mr. John R. Colgan, for tax, auditing and other services rendered the Company for the period of twelve months to March 23, 1937, amounting to $750, and upon motion duly made, seconded, and carried, payment of the bill was approved.

53 The Secretary announced that the note of Mr. William D. Brown for $23.97, covering the purchase of certain gravel along our right-of-way, was several months overdue, but upon the suggestion of Mr. Pagon, it was decided not to take any action upon the note at this time.

With regard to the rental to be paid by Mr. James Rittenhouse, Jr., for the use of a portion of the Terminal Real Estate Company property at North Linthicum, the original amount of said rental having been previously fixed by the Board at $1 monthly, the action of Mr. Pagon in changing the amount of the rental to $2 annually was approved.

Mr. Bowen announced that the District of Columbia condemnation proceedings which affected a portion of our White House terminal property on Bennings Road, had been tried and concluded, and that the jury had fixed the amount of the award at $59,618.36, but had further assessed benefits against our property, because of the opening of 17th Street, at $17,270.62, the net amount of damages awarded being therefore the sum of $42,347.74. Out of

these damages, an allowance would have to be made to the Capital Traction Company for the damage to its tracks and equipment at the Company's loop on Bennings Road at the west end of our property, and Mr. Bowen stated that negotiations were now under way for the adjustment of the amount due the Capital Traction Company.

Mr. Bowen stated that, many years ago, the W., B. & A Electric Railroad Company had given to the Capital Traction Company a perpetual lease over our property for the use of the Traction Company's tracks, and that in order to extinguish this lease he had completed negotiations with the Capital Traction Company by which the Capital Traction Company would be given another location for its loop at a point on Bennings Road approxi-
54 mately 225 feet east of the Bladensburg Road. Mr. Bowen stated that it was very necessary that this lease question should be settled in order that we might have a clear title to the remainder of our property on Bennings Road, and it was thereupon moved, seconded, and carried that the action of Mr. Bowen in offering to deed to the Capital Traction Company a new location for its loop in exchange for the surrender by the Capital Traction Company of any claims which it might have under its old lease from the W., B. & A. Electric Railroad Company, be ratified and confirmed.

Mr. Bowen stated that Mr. C. Ben was interested in the purchase of 53,750 square feet of our property fronting on Bennings Road, and located between the Capital Traction Company's old loop and the proposed new loop, at a price of $2 per square foot, said offer being conditioned upon the condemnation proceedings being completed. If this property were sold to Mr. Ben, we would still have remaining approximately 29,538 square feet, and a letter from Weaver Brothers, our Washington real estate representatives, suggested that Mr. Ben might be interested in buying this remaining property as well. Upon motion duly made, seconded, and carried, it was decided that we should offer to Mr. Ben all of our property in that locality, consisting of approximately 83,288 square feet, at a price of $2.50 per square foot for the property as an entirety and not in parcels.

Mr. Pagon stated that he had held lengthy negotiations with the Consolidated Gas Electric Light & Power Company regarding the poles which were located on our property, and that there had been an agreement made covering rentals for a period of approximately a year and three-quarters to May 20, 1937, the agreed amount of such rentals being $5,034.43. Mr. Pagon had also taken up with the Gas Company the amount which should be
55 paid to us in order that the Gas Company might maintain the poles on our property without the payment of further

rentals, and that it had been agreed that, as to poles standing on property held by us in fee, the Gas Company should pay us twenty times the amount of such rentals, or $28,743.80. However, as to the poles which stood upon property where we did not hold a fee title, Mr. Pagon had not been able to reach an agreement with the Gas Company, but he felt that we should not accept less than six times the annual amount of these rentals. Upon motion duly made, seconded, and carried, the Board approved Mr. Pagon's action in setting the amount of rentals now due us, and also in capitalizing the rentals on fee property at twenty times the amount of such rentals, and furthermore approved Mr. Pagon's recommendation that the capitalization of the rental on poles on non-fee property should be at not less than six times such annual rentals.

Mr. Pagon stated that he was endeavoring to sell to the Consolidated Gas Electric Light & Power Company all of the remaining property held by the Terminal Real Estate Company, the sale to take the form of the purchase by the Gas Company of the stock of the Terminal Real Estate Company, which would give the Gas Company all of the Terminal Real Estate Company's property except cash in bank. Mr. Pagon had stated that he had offered to make said sale for $14,873, and upon motion duly made, seconded, and carried, this action on the part of Mr. Pagon was approved, and Mr. Pagon was authorized to make said sale for the said sum of $14,873.

Mr. Pagon stated that, after the condemnation proceedings had been commenced by the Baltimore & Annapolis Railroad Company against our right-of-way in Annapolis extending from Washington Street to Sims Crossing, Mr. Pagon had with-
56 drawn the offer to sell to Mr. Joseph D. Lazenby the sub-station in Annapolis. Since that time, Mr. Lazenby and his brother had become interested in the purchase of the entire South Shore Line, excluding one mile from Sappington to Naval Academy Junction, and Mr. Pagon stated that he had named a price of $20,000 for the said right-of-way, the Lazenby brothers to take over the property subject to the pending condemnation proceedings. Upon motion duly made, seconded, and carried, Mr. Pagon was authorized to sell the above-mentioned right-of-way for $20,000.

Mr. Pagon stated that he had offered to the State Roads Commission the South Shore Line right-of-way from Sappington to Naval Academy Junction at $2,000 per mile; and the Main Line right-of-way from Naval Academy Junction for approximately one mile north to the Old Annapolis Road at $3,000 per mile, and had also offered to the State Roads Commission our acreage at

Naval Academy Junction at $250 per acre. Upon motion duly made, seconded, and carried, this action on the part of Mr. Pagon was ratified and approved.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

57 BALTIMORE, MARYLAND, *December 8, 1937.*

A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company on Wednesday, December 8, 1937, at 10:30 A. M.

There were present Messrs. Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, of the Board of Directors, Mr. Jesse N. Bowen, of counsel, and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board.

In the absence of Mr. Heyward E. Boyce, Mr. Block acted as Chairman of the meeting, and Mr. Griswold, Secretary of the Company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held on May 13, 1937, were read and approved.

The Secretary announced that $6,635,000 face amount of W., B. & A. Certificates of Deposit had been presented to date to the Depositary, leaving $91,000 Certificates of Deposit still outstanding.

The Secretary stated that the cash balances in the various accounts, as of November 30, 1937, were as follows:

W., B. & A. Realty Corporation	$42,858.48
Terminal Real Estate Company	38,986.22
Maryland Development & Realty Company	3,736.44
	$85,581.14

The attention of the Board was called to an offer by Mr. Harry Klaff of $4,000 for certain property located at the foot of Scott Street, and Mr. Pagon was authorized to sell said property for the best price obtainable, but for not less than $4,000.

The Secretary called the attention of the Board to a letter, dated December 3, 1937, addressed to Mr. William M.
58 Passapae, of the real estate firm of Julius Mintz by Mr. John G. Schilpp, of the law firm of Brown & Brune, in which said letter Mr. Schilpp requested that we grant to his client, Mr. Harry G. Pappas, an option to purchase the Baltimore terminal property for the sum of $135,000, said option to run for a period of three months commencing on December 1, 1937. Attached to Mr. Schilpp's letter was a form of option agreement prepared by him and signed by Mr. Pappas, and also Mr. Pappas' check to the order of the Washington, Baltimore and Annapolis

Realty Corporation for $1,000, to bind the agreement. The agreement provided that, in case of the exercise of the option by Mr. Pappas, he was privileged to give to the W., B. & A. Realty Corporation a purchase money mortgage for $100,000, payable within three years, with interest thereon at 4% per annum, payable semiannually. After a full discussion, the Board unanimously decided that the offer was unacceptable and should be rejected.

The Secretary reported to the Board that, last July, a Bill was introduced in the House of Representatives in Washington, known as H. R. 7472, which Bill would have considerably increased real estate taxes in the District of Columbia, thereby materially affecting the salability of our Washington terminal property as well as our property on Bennings Road. At the suggestion of Weaver Brothers, Inc., our Washington real-estate agents, the officers of the W., B. & A. Realty Corporation wrote letters to the Maryland representatives in Congress, protesting against the Bill, and this action on the part of the officers was approved. The original Bill called for a levy of $1 per $100 on land only, in addition to the then existing $1.50 rate, but the Bill as finally passed raised the tax only 25c per $100 on our Washington property.

59 The Board of Directors approved the payment to Mr. John R. Colgan, who has been acting as auditor for the company, of the sum of $385, of which amount the sum of $260 was for services in preparing permanent books of account for the W., B. & A. Realty Corporation, and the sum of $125 was for services rendered in connection with the preparation of the company's undistributed profits tax return for 1937. The Board of Directors also approved the payment of the sum of $150 to Miss Helen C. Greisz, for services rendered in connection with the keeping of the company's books.

The Secretary reported that the attorneys for the company, Messrs. Semmes, Bowen & Semmes, had presented a bill for $1,500 for services rendered to date, and the payment of this bill was approved.

The Secretary presented to the Board a bill from The Industrial Corporation in the total amount of $15,764.25, of which amount the sum of $5,764.25 was for professional services rendered, and the sum of $10,000 represented an "accomplishment fee." The bill was discussed in detail by the members of the Board, Mr. Pagon having withdrawn during the discussion, and the Board approved the immediate payment of the sum of $5,764.25. As to the said "accomplishment fee" of $10,000, the Board, while recognizing the very valuable services performed by Mr. Pagon, felt that his fee was too high, particularly so because the cost

basis of the various properties was the amount paid by the company at the foreclosure sale where the property was bought in at much less than its true value and without there being any competitive bidding, except in one instance. The Board authorized the President of the company to make an offer in compromise of this accomplishment fee of $5,000, said amount to cover the accomplishment fee in full to January 1, 1938.

60 Mr. Bowen called to the attention of the Board of Directors the fact that The Baltimore & Annapolis Railroad Company had offered the sum of $7,500 for the old South Shore right-of-way in Annapolis, extending from Sims Crossing to Washington Street, which said offer included certain adjustments between The Baltimore & Annapolis Railroad Company and the W., B. & A. Realty Corporation. Upon motion, duly made, seconded, and carried, the Board of Directors approved this sale for the said sum of $7,500.

The attention of the Board was called to the fact that the W., B. & A. Realty Corporation was servicing both the Maryland Development & Realty Company and the Terminal Real Estate Company, and upon motion duly made, seconded, and carried, it was resolved to charge the Maryland Development & Realty Company the sum of $775 for services rendered during the year 1937, and to charge the Terminal Real Estate Company the sum of $1,000 for services rendered during the year 1937.

The Secretary reported that the Terminal Real Estate Company had declared a dividend of $30,000 on all of its capital stock outstanding, being at the rate of $3,000 for each share of the 10 shares outstanding, all of which are owned by the W., B. & A. Realty Corporation. Mr. Colgan, who has been acting as auditor for the company, stated that this divided, together with the other earnings of the W., B. & A. Realty Corporation, justified the payment of the sum of $7 per share on the 6,726 shares of W., B. & A. Realty Corporation stock outstanding. Upon motion duly made, seconded, and carried, it was therefore

Resolved, That the W., B. & A. Realty Corporation pay a dividend of $7 per share out of its income for the year 1937, said dividend to be payable Dec. 24, 1937, to holders of record Dec. 15, 1937.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

61 BALTIMORE, MARYLAND, *January 7, 1938.*

A meeting of the Board of Directors of the Company was held in the Board Room of the Maryland Trust Company on Friday, January 7, 1938, at 10:30 A. M.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, John C. Legg, Jr., and . . Stockton Matthews, of the Board of Directors; Mr. Jesse N. Bowen, of counsel; and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board. Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held on December 8, 1937, were read and approved.

The Secretary announced that $6,669,000 face amount of W., B. & A. Certificates of Deposit had been presented to date to the Depositary, leaving $57,000 Certificates of Deposit still outstanding.

The Secretary stated that the cash balances in the various accounts, as of December 31, 1937, were as follows:

W., B. & A. Realty Corporation	$16,171.73
Terminal Real Estate Company	7,627.03
Maryland Development & Realty Company	2,961.44
	$26,760.20

The Secretary stated that, in accordance with a suggestion made at the last meeting of the Board of Directors, he had taken up with Mr. John R. Colgan, who has been acting as Auditor for the Company, the matter of paying him on a yearly basis rather than for his services as and when rendered, and that Mr. Colgan had stated that he would accept an annual fee of $900, said fee to cover all necessary accounting and tax services required by the company.

62 Upon motion duly made, seconded and carried, it was

Resolved; That Mr. Colgan be paid the sum of $900 for all tax and accounting services rendered or to be rendered by him during the calendar year 1938.

Mr. Pagon announced that he had granted an option to Mr. Harry Klaff to purchase for $5,000 the property located at the foot of Scott Street, said option to run until March 15, 1938, and that Mr. Klaff had paid the sum of $25 to bind the option. Upon motion duly made, seconded and carried, this action on the part of Mr. Pagon was approved.

The chairman announced that, in accordance with the action of the Board at its last meeting, he had submitted to The Industrial Corporation an offer of $5,000 in full settlement to January 1, 1938 of the accomplishment fee of $10,000 which had been heretofore billed to our company by The Industrial Corporation, and that The Industrial Corporation had accepted said offer of $5,000, which had been paid. Upon motion duly made, seconded, and carried, this action on the part of the President.

was approved and his correspondence with The Industrial Corporation was ordered filed with the minutes of this meeting.

The Secretary stated to the Board that the real estate firm of Julius Mintz, through Mr. William M. Passapae, had extended, for a period of one year and two months, beginning January 1, 1938, and ending February 28, 1939, the lease of the Southeastern Express Company, covering certain platform space at the Baltimore terminal property, and this action was approved.

The Secretary presented to the Board a letter, dated January 3, 1938, addressed to Mr. William M. Passapae, of the real estate firm of Julius Mintz, by Mr. John G. Schilpp, of the law
63 firm of Brown & Beune, in which said letter Mr. Schilpp requested that we grant to his client, Mr. Harry G. Pappas, an option to purchase the terminal property for the sum of $150,000, said option to run to April 3, 1938. Attached to Mr. Schilpp's letter was a form of option agreement prepared by him and signed by Mr. Pappas, and also Mr. Pappas' check to the order of the W., B. & A. Realty Corporation for $1,000, to bind the agreement. The agreement provided that, in case of the exercise of the option by Mr. Pappas, he was privileged to give to the W., B. & A. Realty Corporation a purchase money mortgage for $110,000, payable at the end of five years, with interest thereon at 4% per annum, payable semiannually, and with amortization payments at the rate of $5,000 per annum for four years. After discussion, the Board unanimously rejected as unacceptable the offer in the form submitted by Mr. Schilpp, but authorized the Secretary to submit two alternative propositions to Mr. Schilpp, to wit:

(1) Subject to acceptance by Mr. Schilpp's client within thirty days, the company will accept $175,000 in cash for the said Baltimore terminal property, $5,000 to be paid upon the signing of the contract of sale, and the balance within sixty days thereafter; or

(2) Subject to acceptance by Mr. Schilpp's client within thirty days, the company will accept $200,000 for the said Baltimore terminal property, of which sum $5,000 cash is to be paid upon the signing of the contract, $45,000 is to be paid in cash upon the transfer of the property, and $50,000 in cash is to be paid each year thereafter for a period of three years, the unpaid balances to be secured by a purchase money mortgage.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

64 THE CLEARING HOUSE FOR INDUSTRIAL PROBLEMS

THE INDUSTRIAL CORPORATION

LEXINGTON BUILDING, BALTIMORE, MARYLAND

Established 1915

DECEMBER 20, 1937.

Mr. HEYWARD E. BOYCE, *President*,
W., B. & A. Realty Corporation, Baltimore, Maryland.

DEAR MR. BOYCE: I have your letter of December 13th regarding question of our accomplishment fee on the W., B. & A. Realty Corporation engagement.

We sincerely felt that the amount suggested of $10,000 was proper in considering all angles that have been involved in this work, but are not unmindful of our agreement that the sum determined must be agreeable to your Committee, for whose judgment in the matter we have the highest respect.

We will accordingly accept the fee of $5,000, which you suggest, but would appreciate your Committee leaving open for later consideration an additional allowance when the work with which we are assisting the Committee has reached a definite and final conclusion. We make this request because we feel that further important negotiations still under way and others contemplated in which we will be active cannot be fairly and finally appraised by either your Committee or ourselves until they are viewed in completed perspective.

Appreciating your cooperative consideration in this request, I remain,

Very truly yours,

G. HARVEY PORTER,
Vice President.

GHP: ba.

65 DECEMBER 21, 1937.

Mr. G. HARVEY PORTER, *Vice President*,
The Industrial Corporation, Lexington Building,
Baltimore, Maryland.

DEAR MR. PORTER: I have your letter of December twentieth in regard to the accomplishment fee referred to in our previous letters and conversation. Your attitude in the matter is very much appreciated by the committee and, in accordance with their resolution to which I referred in my former letter, I enclose check for $5,000 in full payment of your accomplishment fee to January 1, 1938.

If there should be any additional fee in connection with the matter, the committee will consider it at the proper time as you re-

quest although, with the exception of the sale of real estate, it seems to me that the job is about complete. Therefore, I am sending the check as above with the understanding that it is without any responsibility or liability to the committee nor to me as chairman as to any further or additional payment.

I would like to repeat that the committee highly appreciates the good work of your organization, with particular reference to your engineer, Mr. Watters Pagon. Trusting this will be entirely satisfactory, I am, with kind regards and best wishes,

Very sincerely,

———— ————,
President,
W., B. & A. Realty Corporation.

Mortgage File No. 748. Envelope No. —. Maryland Trust Co.

66 THE CLEARING HOUSE FOR INDUSTRIAL PROBLEMS

THE INDUSTRIAL CORPORATION

LEXINGTON BUILDING, BALTIMORE, MARYLAND

Established 1915

DECEMBER 27, 1937.

Mr. HEYWARD E. BOYCE,
Maryland Trust Company, Baltimore, Md.

DEAR MR. BOYCE: I appreciate your letter of December 21st, enclosing check for $5,000.00 in full payment of accomplishment fee to January 1, 1938.

Your position on behalf of the Committee with reference to an additional allowance for accomplishment is understood, and as in the first instance would have to be entirely agreeable to and with approval in the discretion of said Committee.

Sincerely,

G. HARVEY PORTER,
Vice President.

GHP:ba.

67 MARYLAND TRUST COMPANY,

BALTIMORE, MD., *December 28, 1937.*

Mr. G. HARVEY PORTER, *Vice President,*
The Industrial Corporation, Lexington Building,
Baltimore, Maryland.

DEAR MR. PORTER: I have your letter of December twenty-seventh acknowledging check for $5,000 in full payment of accomplishment fee to January 1, 1938. I am glad you agree with

me in regard to any further allowance. With kind regards and best wishes, I am

Very sincerely,

_____,

President,

W., B. & A. Realty Corporation.

68 Know all men by these presents, That we, the undersigned stockholders of the W., B. & A. Realty Corporation, a Maryland corporation, do hereby nominate and appoint Heyward E. Boyce and Robertson Griswold, or either of them, as and for our lawful proxies or proxy, to vote the number of shares of said Company standing in our names on the books thereof at the annual meeting of said Corporation to be held on Monday, January 24, 1938, at 11:00 o'clock a. m., or at any adjourned meeting thereof, upon any and all matters which may come before said meeting, as fully and completely as we might do if present in person. We hereby ratify and confirm any and all acts done by said proxies or either of them for and on our behalf.

As witness our hands and seals this 22nd day of January 1938.

Witness:

ROBERTSON GRISWOLD,
Robertson Griswold,
HELEN C. GREISZ,
Helen C. Greisz.

HEYWARD E. BOYCE. [SEAL]
SIMON J. BLOCK. [SEAL]
T. STOCKTON MATTHEWS. [SEAL]
JOHN C. LEGG, JR. [SEAL]

69 BALTIMORE, MARYLAND, *January 24, 1938.*

The annual meeting of stockholders of the Washington, Baltimore and Annapolis Realty Corporation was held at the principal office of the Corporation, Maryland Trust Building, in the City of Baltimore, State of Maryland, on January 24, 1938, at 11:00 o'clock A. M.

There were present Messrs. Heyward E. Boyce and Robertson Griswold, proxies representing Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews, Voting Trustees under Voting Trust Agreement dated March 18, 1936, said Voting Trustees holding all of the issued and outstanding stock of the corporation.

Mr. Block presided at the meeting and Mr. Griswold acted as Secretary.

The proxy from the Voting Trustees, running to Messrs. Boyce and Griswold, was filed and was ordered attached to the minutes of this meeting.

The Chairman thereupon called for nominations as Directors of the Corporation for the ensuing year until the next annual

meeting of stockholders. Thereupon, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews were nominated as Directors. There being no other nominations, the same were declared closed and the Secretary was directed to cast a unanimous ballot for all of said nominees. Such ballot having been cast, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews were declared elected directors of the corporation, to serve until the next annual meeting and until their successors are duly elected and qualified.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

70 BALTIMORE, MARYLAND, *January 24, 1938.*

Following the annual meeting of the stockholders of the Washington, Baltimore and Annapolis Realty Corporation, a meeting of the newly elected Board of Directors was held at the principal office of the Corporation, Maryland Trust Building, in the City of Baltimore, State of Maryland, on January 24, 1938, at 11:30 o'clock A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors.

Mr. Boyce acted as Chairman of the meeting, and Mr. Robertson Griswold acted as Secretary.

The Chairman thereupon called for nominations for offices of President, Vice President, Secretary, and Treasurer. Thereupon, Mr. Heyward E. Boyce was nominated as President, Mr. Simon J. Block was nominated as Vice President, and Mr. Robertson Griswold was nominated as Secretary and Treasurer. There being no other nominations, said nominees were declared unanimously elected to the respective offices to which they had been nominated, to serve until the next annual meeting of the Board of Directors and until their successors are duly elected and qualified.

There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

71 BALTIMORE, MARYLAND, *February 9, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Wednesday, February 9, 1938, at 11:00 A. M., in the Board Room of the Maryland Trust Company.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, of the Board of Directors, Mr. Jesse N. Bowen, of Counsel, and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board. Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held on January 7, 1938, were read and approved.

The Secretary announced that $6,686,000 face amount of W., B. & A. Certificates of Deposit had been presented to date to the Depositary, leaving $40,000 Certificates of Deposit still outstanding.

The Secretary stated that the cash balances in the various accounts, as of January 31, 1938, were as follows:

W., B. & A. Realty Corporation	$18,681.09
Terminal Real Estate Company	7,619.03
Maryland Development & Realty Company	3,086.44
	$29,386.56

A form of letter and statement to be sent out to all Voting Trust Certificate holders was presented to the Board of Directors and was approved. A copy of said letter and statement is attached to these minutes.

The Secretary brought to the attention of the Board a letter, dated January 28, 1938, addressed by Mr. John G. Schilpp, attorney for Mr. Harry G. Pappas, to Mr. William M. Passapae, of the real estate firm of Julius Mintz, and after discussion, the Board of Directors approved the sale to Mr. Schilpp's client
72 of all of the corporation's right, title, and interest in the Baltimore Terminal property at Howard and Lombard Streets, on the terms and for the consideration set forth in said letter, except that there should be a down payment by Mr. Pappas of $5,000 instead of $2,500 on the signing of the contract of sale, the additional payment in cash when the transaction is consummated to be $35,000 instead of $37,500. A copy of Mr. Schilpp's letter to Mr. Passapae was ordered attached to the minutes of this meeting.

The Secretary presented to the meeting a letter, dated February 8, 1938, from Mr. J. R. Colgan, the auditor for the corporation, regarding the possible dissolution of the Terminal Real Estate Company and the Maryland Development and Realty Company. This letter was referred to our counsel, Mr. Jesse N. Bowen, for his attention.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

73 WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORPORATION

2ND FLOOR MARYLAND TRUST BUILDING, CALVERT AND REDWOOD STREETS

BALTIMORE, *February 9, 1938.*

To the Holders of Washington, Baltimore and Annapolis Realty Corporation Voting Trust Certificates for Stock:

You will recall that, under date of December 2, 1936, the former Bondholders' Protective Committee forwarded to you a very comprehensive letter reviewing the history of the Washington, Baltimore & Annapolis Electric Railroad Company from January 27, 1931, the date of the receivership. In accordance with our said letter, a distribution was then made of $50 on account of each $1,000 Certificate of Deposit, plus a voting trust certificate representing one share of stock in the newly formed Washington, Baltimore & Annapolis Realty Corporation. The Committee pointed out in its letter that the assets of the company had then been liquidated with certain exceptions, consisting mainly of the real estate and terminals in Washington and Baltimore and certain other parcels of real estate and miscellaneous assets. Since that time the officers of the W., B. & A. Realty Corporation have had no occasion to communicate with you except as per the letter of March 8, 1937, in regard to the ruling of the Commissioner of Internal Revenue relative to the income tax situation, and the notice advising you of the dividend of $7 per share on the stock from the earnings for the year 1937, which dividend was paid on December 24, 1937. In that notice we advised you that an operating statement for 1937 would be forwarded within a reasonable time. In accordance therewith, you will find on the reverse of this letter a condensed statement showing all receipts and expenditures of the W., B. & A. Realty Corporation and its subsidiary companies for the period from December 2, 1936 (the date of our last statement to certificate holders) to and including December 31, 1937. You will note that we have not presented the corporation's balance sheet. This is due to the fact that, for tax purposes, our books carry all of our properties at the price at which they were bought in at the foreclosure sale of the W., B. & A. Electric Railroad Company, hence such a balance sheet does not present a true picture of the corporation's present situation.

We regret that at this time we are unable to report any further material progress, although we have disposed of several parcels of real estate and other assets. We still own, however, the terminals and real estate in Washington, D. C., and in Baltimore, which constitute practically all of the remaining assets. The two principal terminal properties are both leased on what is considered a fair rental basis, which at the present time is sufficient to take

care of taxes and other carrying charges. While we have had inquiries for their possible purchase, we have not as yet disposed of these properties.

The officers of the corporation will be very glad to give any of the voting trust certificate holders such information as is available. The entire matter is having our close attention and our best efforts will be put forth looking towards as fair a liquidation as possible.

Very truly yours,

ROBERTSON GRISWOLD,
Secretary.

74 COMBINED STATEMENT OF RECEIPTS AND EXPENDITURES OF W., B. & A. REALTY CORPORATION, TERMINAL REAL ESTATE COMPANY OF BALTIMORE CITY AND MARYLAND DEVELOPMENT & REALTY CORPORATION OF ANNE ARUNDEL COUNTY

RECEIPTS		
Cash Balance, as shown on last page of letter dated December 2, 1936 to certificate holders		$25,553.08
Net rentals collected		51,530.79
Properties sold, net proceeds		60,857.02
Interest received		132.47
EXPENDITURES		
Engineering, sales and supervisory service (largely nonrecurring)	$14,008.65	
Legal fees and expenses	4,139.90	
Depositary fees and expenses	2,170.29	
State-City-County real property taxes $25,086.84		
Less taxes refunded on properties sold 1,647.44		
	$23,449.40	
Federal Capital Stock tax	7,632.00	
Federal Income tax for 1936	1,582.93	
Federal Social Security tax	9.75	
Maryland Corporation tax	215.00	
	31,289.08	
Ground rents paid on Baltimore properties	1,653.16	
Baltimore City elevator inspection fee	12.00	
Salaries of officers	1,900.00	
Salaries of employees	225.00	
Directors' fees	160.00	
Insurance premiums	2,080.20	
Property appraisal expense for determining insurable value	40.00	
Repairs to properties	751.93	
Rental due under Hechinger Properties Company lease	3,184.02	
Final interest payment on loan	588.00	
Printing	249.25	
Bookkeeping, auditing and stenographic expense	1,435.00	
Miscellaneous expenses	254.68	
Dividend paid to certificate holders	47,082.00	
Balance of cash on hand December 31, 1937	26,760.20	
	$138,073.36	$138,073.36

75 BROWN & BRUNE
Established 1838

JANUARY 28, 1938.

Mr. WILLIAM M. PASSAPAE,
1009 Calvert Building, Baltimore, Maryland.

MY DEAR MR. PASSAPAE: After the receipt of the letter from Mr. Robertson Griswold, Secretary-Treasurer of the Washington, Baltimore and Annapolis Realty Corporation, addressed to you under date of January 7, 1938, regarding the terminal properties at the Southwest corner of Howard and Lombard Streets, I communicated its contents to my client, Mr. Harry G. Pappas.

After giving the matter careful consideration, Mr. Pappas has authorized me to submit through you to the Washington, Baltimore and Annapolis Realty Corporation, or to the Committee which has its affairs in charge, the following proposition:

To enter into a contract for the sale of said properties at the price of $175,000.00, my client agreeing to pay $2,500.00 on the signing of the contract and $37,500.00 additional in cash when the transaction is consummated, which will be four months from the date of the signing of the contract; the balance of
76 $135,000.00 to be repaid by a purchase money mortgage for three years at 4%; $10,000.00 to be paid within the first year and $10,000.00 within the second year, during the continuance of said mortgage.

I wish you would make it clear to the officials of the Washington, Baltimore and Annapolis Realty Corporation, or to the Committee which has this matter in charge, that my client has reached the limit, both as to price and making offers for these properties, and in that connection I request, on his behalf, a prompt answer, either accepting or rejecting this new offer, within a reasonable time; and I would consider that on or before February 25, 1938, would be a reasonable period within which the Washington, Baltimore and Annapolis Realty Corporation, or the Committee which has this matter in charge, shall either accept or reject the proposition herewith submitted.

Very truly yours,

JOHN G. SCHILPP.

JGS:AML.

77 BALTIMORE, MARYLAND, *February 28, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Monday, February 28, 1938, at 3:00 P. M., in the Board Room of the Maryland Trust Company.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, of the Board of Directors, and Mr. Watters Pagon, of The Industrial Corporation, at the request of the Board. Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held February 9, 1938, were read and approved.

The Secretary reported that there had been no change, since the last meeting, in the number of Certificates of Deposit presented to the Depositary for liquidation.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$23,998.37
Terminal Real Estate Company	7,760.25
Maryland Development & Realty Company	3,086.44
	$34,845.06

The Secretary submitted to the Board of Directors a copy of a letter, dated February 24, 1938, from Mr. James Carey Martien to Mr. Jesse N. Bowen to which was attached a copy of a letter, dated February 21, 1938, from Mr. H. Rozier Dulany, Jr., to Story and Company, real estate brokers of Washington, D. C., both of which letters related to an offer by Mr. Dulany to purchase the Washington terminal property at New York Avenue and 11th Street. Copies of both of these letters are attached to the minutes of this meeting. After discussion, the
78 Board of Directors decided that Mr. Dulany's offer was not acceptable, but that the Board would be willing to entertain an offer to purchase said terminal property for $530,000, of which $180,000 would be paid in cash (which would mean $150,000 in cash net to the W., B. & A. Realty Corporation after the payment of a commission to the real estate brokers). If such a cash payment were made, the Board of Directors indicated that they would be willing to accept a purchase money mortgage for $350,000, representing the balance of the purchase price, said mortgage to run for five years, with interest thereon at 4% per annum, and to be secured not only by the property itself but also by a pledge to the W., B. & A. Realty Corporation of a lease of the property by the Greyhound interests, the net rental payable under said lease to be not less than a straight rental of $30,000 per annum for the entire term of said lease, which said term should not be less than twenty years. In addition, the Greyhound interests were to be obligated to improve the property by the

expenditure of not less than $200,000 upon the same. Mr. Boyce was requested by the Board to discuss the entire matter personally with Mr. Martien.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

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H. ROZIER DULANY, JR.

ATTORNEY AND COUNSELLOR AT LAW

815 Fifteenth Street

Washington, D. C., February 21st, 1938.

STORY AND COMPANY,
804 17th Street, NW., Washington, D. C.

GENTLEMEN: I would be willing to purchase property known as the old W., B. & A. Bus Terminal, at New York Avenue and 11th Street, for the sum of $530,000 upon the following terms and conditions, and subject to the following provisos:

1. The sum of $530,000 to include my entire obligations for commissions on hereinafter mentioned lease or otherwise;

2. Terms to be $80,000 cash, balance of $450,000 to be secured by first deed of trust on the property, payable on or before five (5) years after date, with interest at 4% per annum;

3. Notes for the $450,000 to be signed either by a straw party or by a corporation to be formed;

4. Lease to be secured from the Pennsylvania Greyhound Company, and guaranteed by the Greyhound Corporation, to rent the property for twenty (20) years, at a net rental of $40,000 per annum for the first five years, and $26,666.67 per annum for the next fifteen (15) years, payments to be made quarterly;

5. Possession to be given, and lease to begin at date of settlement;

6. The Pennsylvania Greyhound Company to erect within a reasonable time improvements on the property to cost at least $200,000, which improvements are to revert to and become the absolute property of the land owner at the expiration or termination of the lease.

Please advise me if the above arrangements can be made.

Very truly yours,

hrd/af. (Signed) H. ROZIER DULANY, JR.

80 WILLIAM MARTIEN & COMPANY, INC.

REALTORS

COMMERCIAL AND INDUSTRIAL REAL ESTATE

3200 Baltimore Trust Building

Baltimore, Md., February Twenty-fourth 1938.

Re W., B. & A. New York Ave., 11th & 12th Sts., Washington Property

Mr. JESSE N. BOWEN,
2500 Baltimore Trust Building, Baltimore, Maryland.

DEAR MR. BOWEN: I have received through Weaver Brothers the enclosed proposition submitted by H. Rozier Dulany, Jr., to Story & Company, Washington brokers, to purchase the above property at the price and on the terms and conditions therein indicated. This proposition has not been submitted to the Greyhound Company, and should it have the approval of the Liquidating Committee it will then be necessary to continue our negotiations with Pennsylvania Greyhound to determine whether the conditions laid down by Mr. Dulany, pertaining to the lease, are satisfactory to them.

As I have previously explained to you, Mr. Weaver and I believe that the Greyhound Company is the most logical occupant of this property, and for the past two years negotiations have been pending with them, initially to have them purchase the property, which could not be accomplished, and subsequently to find a basis of rental and conditions of lease meriting an investor in acquiring the property and effecting such a lease. The maximum rent which Greyhound will pay is $30,000 net per year and make improvements at their expense involving cost of not less than $200,000. While a 20-year lease has been considered, Greyhound recently indicated a preference for a 10-year lease. Our discussions with Greyhound have been predicated upon a terminal company as lessee, possibly with Pennsylvania Greyhound as guarantor of the lease. I note Mr. Dulany indicates the condition that Pennsylvania Greyhound become lessee, with the Greyhound Company (parent company) as guarantor of the lease.

Should the proposition be approved by the Liquidating Committee I think it probable that reasonably prompt action can be obtained from Greyhound, and such differences as may exist be-

tween their viewpoint and that of Mr. Dulany should be ironed out promptly and satisfactorily. The commissions on the sale and lease will involve $30,000. Therefore, Mr. Dulany's proposition is equivalent to a $500,000 net price for the property.

This is the most favorable definite proposition we have been able to obtain. During the long and presistent efforts that have been made to dispose of this property in connection with
81 the Greyhound tenancy, Mr. Dulany has been the most favorable purchaser we have found, and I accordingly do not hesitate to recommend your favorable consideration of this proposition.

Yours very truly,

(Signed) J. C. MARTIEN,
James Cary Martien,
President.

JCM:JC.

82 BALTIMORE, MARYLAND, *April 28, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Thursday, April 28, 1938, at 11:00 A. M., in the Board Room of the Maryland Trust Compan.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, T. Stockton Matthews, and John C. Legg, Jr., of the Board of Directors. Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held February 28, 1938, were read and approved.

The Secretary reported that $6,699,000 face amount of Certificates of Deposit had been presented to date to the Depositary for liquidation, leaving $27,000 Certificates of Deposit still outstanding.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W. B. & A. Realty Corporation	$30,302.82
Terminal Real Estate Corporation	4,386.66
Maryland Development & Realty Co	3,186.44
	$37,875.92

Mr. James Carey Martien appeared before the Board of Directors in regard to the possible leasing of the Washington terminal property at New York Avenue and 12th Street to the Greyhound interests. Mr. Martien stated that he thought that he might be able to obtain from the Pennsylvania Greyhound Company an offer to rent the property for a period of from ten to twenty years at a net rental of $30,000 per annum, the Greyhound Company to place upon the property improvements costing not less than

$200,000. The lessee would probably have to be a terminal company, which would be a subsidiary of the Pennsylvania
83 Greyhound Company and would have a limited capital, but it might be possible to have the lease guaranteed by the Pennsylvania Greyhound Company. Mr. Martien stated that if we entered into such a lease, he felt that we might be able to secure a mortgage on the property after the improvements had been made, and that the proceeds of such a mortgage could then be distributed to our stockholders.

Mr. Martien having withdrawn from the meeting, a full discussion was had, and upon motion duly made and seconded, it was

Resolved, That the corporation was not interested in a lease proposition on any basis, and that the purchase price which he had heretofore named to the Greyhound interests of $500,000 had been predicated on a quick sale of the property at that figure, and that inasmuch as such a sale had not been consummated, the offering of the property at this figure should be withdrawn and that we should again return to our original asking price of $650,000.

Mr. Boyce was requested to advise Mr. Martien as to the action of the Board, and Mr. Martien's letter, dated April 26, 1938, together with a copy of Mr. Boyce's reply of April 28, 1938, were ordered attached to the minutes.

The Secretary announced that the contract of sale covering the Baltimore Terminal property had been executed by Mr. Harry G. Pappas on March 26, 1938, and that we had received the initial cash payment of $5,000.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

84 WILLIAM MARTIEN & COMPANY, INC.

REALTORS

COMMERCIAL AND INDUSTRIAL REAL ESTATE

3200 Baltimore Trust Building

BALTIMORE, MD., *April Twenty-sixth, 1938.*

Re W., B. & A. New York Ave., 11th and 12th Sts. Washington Property

Mr. HEYWARD E. BOYCE,
Calvert & Redwood Streets, Baltimore, Maryland.

DEAR HEYWARD: In accordance with our conversation this afternoon, I telephoned Mr. Dodge, of Weaver Bros. Inc., in Washing-

ton, and find that their rate of commission in Washington for negotiating leases is 5% for the first year and 2½% thereafter up to 21 years; that where a lease is at a net rent the taxes for the current year are added in arriving at the total commission; also, that all commissions are due and payable upon consummation of the lease.

Under the pending lease, on the basis of $30,000 net rent with land taxes estimated at $10,00, or gross rent of $40,000, the commission under the Washington rule would be 5% for the first year, or $2,000, and 2½% for 19 years, or $19,000, making a total commission of $21,000.

Should the Committee be willing to have us proceed with the negotiation with Greyhound on the lease basis, Weaver Bros. Inc. and William Martien & Co., Inc. are willing to adjust the commission charge on the Washington rate of 5% and 2½% as above noted, on the net rent of $30,000, which will make the total commission under the lease $15,750. We are willing to do this in order to assist you in disposing of this property.

Yours very truly,

J. C. MARTIEN,
James Carey Martien,
President.

JCM:JC.
Copy to Weaver Bros. Inc., Washington, D. C.

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MARYLAND TRUST COMPANY
BALTIMORE, MD.

APRIL 28, 1938.

MR. JAMES CAREY MARTIEN,
Baltimore Trust Building, Baltimore, Maryland.

DEAR CAREY: Referring to our several recent talks and your letter of April twenty-sixth and your meeting with the Committee today, I wish to say that the final action of the Committee was to definitely decide that we would not be interested in the lease to the Greyhound Corporation or anyone else along the lines indicated.

I might also add that it was the unanimous opinion of the Committee that offering to sell the terminal property at $500,000 net was in the nature of an emergency offering on our part in order to attract a quick sale in connection with the proposed lease to the Greyhound. We are further of the opinion that keeping the property on the market at $500,000 is doing nothing but lessening our chances of sale and it is, therefore, our disposition to go back to an offering price of no less than $650,000.

Inasmuch as we are definitely not interested in the lease, I hope you will agree with us on our conclusions as stated above. I still hope it will be possible to negotiate a sale in the not too distant future.

Very sincerely,

_____,

President,
W., B. & A. Realty Corporation.

86 BALTIMORE, MARYLAND, *June 6, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Monday, June 6, 1938, at 3:00 P. M., in the Board Room of the Maryland Trust Company.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, T. Stockton Matthews, and John C. Legg, Jr., of the Board of Directors. Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held April 28, 1938, were read and approved.

Mr. Boyce presented to the Board a letter, dated June 1, 1938, from Mr. O. W. Clark, of the firm of William Martien & Co., to which letter was attached a copy of a letter, dated June 3, 1938, from Mr. John L. Weaver, of the real estate firm of Weaver Bros., Inc., Washington, D. C. Mr. Weaver's letter suggested that the W., B. & A. Realty Corporation make a definite offer of its property, located at New York Avenue and 12th Street, to the United States Government because of the fact that the Government would probably be a prospective purchaser of some Washington real estate due to its need for further facilities for the housing of some of its activities. After a discussion, Mr. Boyce was requested to write to Mr. Martien's office, stating that the Board of Directors of the W., B. & A. Realty Corporation had fixed an asking price of $650,000 for the above-mentioned property, and that Weaver Bros. were authorized to offer the property to the Government at not less than said price, with the understanding, however, that the property would not be tied up for any unreasonable length of time because of said offer.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

87 BALTIMORE, MARYLAND, *October 13, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Tuesday,

October 11, 1938, at 3:00 P. M., in the Board Room of the Maryland Trust Company.

There were present Messrs. Heyward E. Boyce, Chairman, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, of the Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. W. Watters Pagon, of The Industrial Corporation, at the request of the Board. Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors held June 6, 1938, were read and approved.

The Secretary reported that $6,700,000 face amount of Certificates of Deposit had been presented to date to the Depositary for liquidation, leaving $26,000 Certificates of Deposit still outstanding.

The Secretary stated that the cash balance in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$23,972.24
Terminal Real Estate Company	4,173.92
Maryland Development & Realty Company	3,072.16
	$31,218.32

The Secretary presented to the meeting the bill of Mr. William M. Passapae of the real estate firm of Julius Mintz, in the amount of $1,500, for services rendered by Mr. Passapae in connection with tax assessment reductions obtained over the last three years on properties now belonging to the W., B. & A. Realty Corporation and is subsidiaries. The Secretary stated that, with the approval of our President, Mr. Boyce, a check for $500 on account of this bill was sent to Mr. Passapae last July, but that before paying the balance of the bill it was felt that a
88 further investigation should be made of the value of Mr. Passapae's services, and that the Secretary had accordingly referred all of the correspondence and other papers to the Corporation's auditor, Mr. Colgan, who had recently completed his report and had recommended that Mr. Passapae's bill be paid in full in view of the substantial tax savings which he had effected and the tax refunds which he had obtained. Mr. Colgan's report was submitted to the Board by the Secretary, and the Board thereupon approved the payment of the remaining balance of $1,000 on Mr. Passapae's bill.

The Secretary presented to the Board a bill of Mr. Harry T. Connolly for $750 for services rendered to the W., B. & A. Bondholders' Protective Committee, in the matter of furnishing information, handling correspondence, conferences with various employees of the W., B. & A. Realty Corporation and other miscellaneous items. Mr. Pagon stated that he was not familiar with

many of the matters set forth on Mr. Connolly's detailed memorandum of services rendered, and that the memorandum seemed to indicate that most of these services had been performed at the request of the late Mr. Jesse N. Bowen. The Board felt that, with the information which it had in hand, the bill seemed excessive, and the matter was thereupon referred to Mr. Boyce, who was authorized to settle the bill with Mr. Connolly for an amount not exceeding $500.

The Secretary presented a bill from William Martien & Co. for $1,000 for services rendered by them in conjunction with Weaver Bros., Inc., in connection with the condemnation proceedings covering the opening of Maryland Avenue and 17th Street through our Bennings Road property in Washington, D. C. The Board did not feel that this bill should be paid without further information upon the subject, and Mr. Moss was
89 requested to examine Mr. Bowen's files in order to ascertain, if possible, what arrangements had been made in connection with compensation for our real estate advisers in the condemnation proceedings.

The Secretary announced that the lease of the Southeastern Express Company of the property at Pratt and Eutaw Streets had expired on July 31, 1938, and that the Express Company had not renewed the same.

With regard to the contract of sale entered into with Mr. Harry G. Pappas, covering our Baltimore terminal property, Mr. Moss stated that Mr. Pappas' attorney, Mr. John G. Schilpp, had made numerous objections to the title to the property, most of which had been satisfactorily answered, but that there still remained a cloud on the title to three of the parcels of land included in the contract of sale. Mr. Moss said that it had been impossible so far to clear away these particular defects, and that Mr. Pappas had accordingly asked for a cancellation of the contract and a return of the $5,000 heretofore paid to us. Mr. Moss stated that he felt that Mr. Pappas was within his legal rights in making this demand. Mr. Boyce was thereupon requested by the Board to take up the entire matter with the real estate firm of Julius Mintz, in an endeavor to reach some amicable settlement with Mr. Pappas. Mr. Moss also requested authority to employ the title company to make a further examination of the title to those pieces of property where the title seemed to be defective, in an effort to clear the same in order that we might be in a position to give in the future a good and merchantable title to either Mr. Pappas or to any other prospective purchaser. This authority was granted to Mr. Moss by the Board.

Mr. Pagon stated that Mr. Parker W. Frames and Mr. J. H. Riepe had asked for a four months' option for the purchase
90 of the Naval Academy Junction property for $30,000, a down payment of $100 to be made by them upon our granting the option. After discussion, the Board decided that it would not grant this option.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

BALTIMORE, MARYLAND, *October 21, 1938.*

A meeting of the Board of Directors of the W., B. & A. Realty Corporation was held at the office of Mr. Heyward E. Boyce, who called the meeting at 3 P. M., on October 21, 1938, to act upon the question of the granting of a thirty-day option on the terminal property in Washington, in accordance with a letter, dated October 21, 1938, from Mr. James Carey Martien, President of William Martien & Company, Inc.

Those present were Messrs. Heyward E. Boyce, Chairman, John C. Legg, Jr., Simon J. Block, and T. Stockton Matthews.

On account of the absence of Mr. Griswold, the Secretary, the minutes of the meeting held October 11, 1938, were not read.

After a thorough discussion of the matter of granting a thirty-day option on the Washington terminal property, and after consultation over the telephone with Mr. Ambler H. Moss, of counsel, in regard to legal details of said option and final settlement thereof if the same were exercised, it was agreed that the option should be granted in accordance with the said
91 letter from Mr. James Carey Martien. It was therefore moved and seconded, and unanimously carried

That the Board grant a thirty days option on the sale of the property known as the Twelfth Street Terminal in Washington, D. C., for the sum of $515,000, subject to a total commission of $15,000, of which, if the option should be exercised, $115,000 is to be paid in cash and the balance accepted in the form of a mortgage for $400,000 for five years at 4%, the said option being given in accordance with the letter of William Martien & Company, Inc., dated October 21, 1938, which said letter is attached to these minutes.

Upon the acceptance of the above, or before, arrangements will be made for the purchasing company to make a special deposit of $200,000 in the Maryland Trust Company, to be spent under satisfactory conditions on improvements to the property.

Mr. Boyce also reported that, after exhaustive inquiry, it looked as if the sale of the Baltimore terminal property would

not go through on account of defects in the title and that he had learned through Mr. Moss that a further demand would be made upon us for the return of the deposit of $5,000. Although no action was taken, it was the consensus of opinion of the Board that if we surrendered the $5,000 payment, we should seriously consider the question of giving the present lessee proper notice of the cancellation of the lease.

Mr. Boyce also reported that after a very satisfactory conversation with Mr. Connolly, he had agreed upon a compromise settlement with him of $500 in full in lieu of his former bill of $750.

There being no further business, the meeting adjourned.

HEYWARD E. BOYCE,
Acting Secretary.

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WILLIAM MARTIEN & COMPANY, INC.

REALTORS

COMMERCIAL AND INDUSTRIAL REAL ESTATE

3200 Baltimore Trust Building

Baltimore, Md., October Twenty-first, 1938.

MR. HEYWARD E. BOYCE, *President,*
W., B. & A. Realty Corporation,
Baltimore, Maryland.

DEAR HEYWARD. You are generally familiar with the effort Weaver Bros., Inc., and I have made for the past two or three years to interest the Greyhound Companies in your New York Ave., 11th and 12th Sts. property, as its Washington Terminal. In connection with these negotiations, I was recently introduced to Mr. Arthur Hill, Vice President of the Greyhound Corporation, by Mr. Stockton Matthews, as a result of which Mr. Matthews and I were requested to meet Mr. Hill, Mr. Caesar, President of Greyhound Corporation, and their Board of Directors in Washington on Thursday morning, October 20. Mr. Matthews and I met these gentlemen at the appointed time, when the subject was discussed at length.

After our preliminary discussion of the pros and cons of the W., B. & A. property and their existing terminal, Mr. Caesar explained that it has been contrary to their policies to purchase property in any city for terminal purposes, and this viewpoint is particularly stressed by some of the officers of the Pennsylvania Railroad who are on the Board of the Pennsylvania Greyhound Company; that before he can obtain favorable consideration of

a proposition involving their purchase and improvement of your property it is necessary that he have a thirty-day option in order to review the matter fully with the Directors of the Pennsylvania, Richmond, Atlantic, and Capital Greyhound Companies, as each of these companies must be subscribers to the capital funds required to purchase and improve the property.

Mr. Caesar and his associates were conversant with the negotiations which we had last spring, when efforts were made to sell the property to a Washington capitalist and lease to Greyhound, at which time your Committee expressed its willingness to dispose of the property for $500,000 net, and carry a $350,000 or possibly $400,000 mortgage on the property for five years at 4%. I explained to Mr. Caesar that the Committee's price for the property is $650,000, but that it was true your Committee last spring was willing to entertain a proposition as above defined.

Mr. Caesar has requested that I secure a thirty-day option to purchase the property for $515,000, payable $115,000 in
93 cash (of which $15,000 will cover brokers' commission on the sale), $400,000 to be secured by mortgage on the property for five years at 4%, with right of anticipation in whole or in part on thirty days' notice, mortgage to be amortized at the rate of $15,000 per annum.

Should the option be exercised, in addition to the payments above defined a Terminal Company, which will take title and make the mortgage, will simultaneously deposit with the Maryland Trust Company, as escrow agent, $200,000 subject to the joint order of your Committee and the Terminal Company, which fund will be used in the construction of the terminal improvements on this site. It is expected these improvements will be completed within six months from the date title is passed. Settlement as above to be made upon delivery of possession of the entire property which, under your leases with Dezendorf and Gulf Refining Company, can be done within ninety days from the date a bona fide contract of sale is executed.

Mr. Caesar and Mr. Hill explained to Mr. Matthews and me that under this form of transaction there will be no lease created between the operating companies and the Terminal Company, but the operating lines will contract with the Terminal Company to use its facilities for a period of twenty years, and for the use of the facilities the operating companies pay the Terminal Company a percentage of all ticket sales at this terminal, which is designed to adequately cover all costs of the Terminal Company. These gentlemen further explained that in the event any one or more of the companies should encounter financial difficulties it

would be encumbent upon the remaining companies, in order to retain their terminal facilities, to absorb any deficiency.

Yours very truly,

J. C. MARTIEN,
James Carey Martien,
President.

JCM:JC.

94 BALTIMORE, MARYLAND, *November 25, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held Friday, November 25, 1938, at 10:30 A. M., in the office of Mr. Heyward E. Boyce at the Maryland Trust Company.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors, and Mr. Robertson Griswold, Secretary of the Company.

Mr. Boyce, President of the Company, presided, and Mr. Robertson Griswold, Secretary of the Company, acted as Secretary of the meeting.

The minutes of the meetings of the Board of Directors, held October 11, 1938, and October 21, 1938, were read and approved.

The Secretary announced that there still remained outstanding $26,000 face amount of W., B. & A. Certificates of Deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$22,178.20
Terminal Real Estate Company	4,221.04
Maryland Development & Realty Company	3,072.16
	$29,471.40

Mr. Boyce stated that he had had two talks with Messrs. Parker W. Frames and J. Holliday Riepe, regarding the granting of a four months option for the purchase of the Naval Academy Junction property, and that after discussing the matter informally with Messrs. Legg, Matthews, Block, and Pagon, it had been unanimously decided to grant the option as originally recommended by Mr. Pagon. Upon motion duly made and seconded, this action was approved and ratified. The Secretary thereupon announced that a check for $100, to bind the option, had been duly received from Messrs. Frames and Riepe on October 26, 1938, and had been deposited to the credit of the W., B. & A. Realty Corporation account.

95 The Secretary announced that Mr. C. E. Wollman, of the Consolidated Gas Electric Light & Power Company, had

requested advice as to whether the Realty Corporation was preparing any statement to be sent out to the holders of the Voting Trust Certificates. The Board decided that there was no necessity for the preparation of such a statement at this time, but that after we had more definite information regarding the proposed sale of the Washington terminal property, it might be advisable to notify the certificate holders by means of a circular letter, which would be accompanied by a statement of receipts and disbursements for the calendar year 1938.

Mr. Boyce called to the attention of the Board a letter, dated November 19, 1938, which he had received from Mr. James Carey Martien, stating that the Greyhound interests had requested a thirty-day extension of their option to purchase the Washington terminal property at New York Avenue and 12th Street, Washington, D. C., which said option would expire on November 26, 1938. Upon motion duly made and seconded, it was unanimously resolved that this extension be granted as requested.

Mr. Boyce stated that he had talked with Mr. Julius Mintz regarding the Baltimore terminal property, the sale of which to Mr. Harry G. Pappas had fallen through because of certain defects in the title. Mr. Mintz stated to Mr. Boyce that he had another prospect in view as a tenant for the property if we saw fit to cancel our lease to Mr. Pappas, and it was decided that Mr. Boyce should endeavor to ascertain from Mr. Mintz the amount of the subrentals which Mr. Pappas was receiving from various other parties on the premises, after which the Board would again consider the advisability of cancelling Mr. Pappas' lease or else continuing the lease at a higher rental. Mr. Block stated
96 that he understood that a bus line, which he thought was called the Inter-City Bus Company, was using the terminal, and Mr. Block was requested to obtain some information regarding this company.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

97 BALTIMORE, MARYLAND, *December 28, 1938.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company on Wednesday, December 28, 1938, at 10:30 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. Robertson Griswold, Secretary of the company.

Mr. Boyce, President of the company, presided, and Mr. Robertson Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held November 25, 1938, were read and approved.

The Secretary announced that there still remained outstanding $26,000 face amount of W., B. & A. Certificates of Deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$47,245.51
Terminal Real Estate Company	4,221.04
Maryland Development & Realty Company	3,835.69
	$55,302.24

The Secretary reported that, under date of December 14, 1938, the company had entered into a contract of sale with Greyhound Terminal of Washington, Inc., covering the Washington terminal property at New York Avenue and 12th Street, Washington, D. C., and that Greyhound Terminal of Washington, Inc. had paid to us the sum of $25,000 to bind the contract in accordance with the terms of said contract.

The Secretary reported that Mr. W. Watters Pagon had completed his negotiations with the State Roads Commission
98 for the purchase by the Commission of approximately 39.67 miles of the old W., B. & A. right-of-way, extending from the Patapsco River to the Linthicum Private Road, from Shipley Station to the District of Columbia Line, and from Naval Academy Junction to Cowhide Branch Road, the said sale having been made for a consideration of $80,000, of which the sum of $10,000 would have to be paid to the Pennsylvania Railroad Company because of the necessity of our repurchasing from the Railroad Company a certain portion of the right-of-way which we had heretofore sold to the Railroad Company, and which was required by the State Roads Commission to be included in the right-of-way to be purchased by them. This action on the part of Mr. Pagon was approved and ratified.

The Secretary called to the attention of the Board a letter from Mr. Pagon, dated December 10, 1938, in which Mr. Pagon stated that an agreement had finally been made with the Capital Transit Company covering our share of the condemnation proceeds affecting our property at 15th and "H" Streets, Washington, D. C., under which agreement we would receive the sum of $28,346.26 from which we would be expected to pay an old paving tax of $2,000, and the bill of Messrs. Weaver and Martien for $1,000 for services rendered by them in connection with the con-

demnation proceedings. The Board approved the said settlement, including the amount of Messrs. Weaver and Martien's bill for $1,000.

The Secretary called to the attention of the Board a letter from Mr. Ambler H. Moss, dated December 23, 1938, in which Mr. Moss advised that the dissolution of the Maryland Development and Realty Company of Anne Arundel County and the Terminal Real Estate Company of Baltimore City be delayed until after the consummation of our sales to the Greyhound interests and to the State Roads Commission, and the Board of Directors approved Mr. Moss' suggestion. Upon motion duly made and seconded, the Board furthermore authorized the officers of the company and its counsel to proceed with the dissolution of the two subsidiary companies at such a time as, in their opinion, such action was deemed advisable.

The attention of the Board was called to a recommendation by Mr. W. Watters Pagon that we convey to the Baltimore and Annapolis Railroad Company, without consideration, a parcel of ground situate in the vicinity of Round Bay Station and owned by the Maryland Development & Realty Company, but action on this was deferred pending the securing of further details from Mr. Pagon.

The Board approved the payment of a bill for $93 rendered by Mr. William M. Passapae, for services in connection with the obtaining of a $10,000 reduction in the assessment on improvements at Howard and Lombard Streets, on account of which Mr. Passapae had secured a tax refund from the city of $279.01.

The Board approved the payment of the sum of $150 to Miss Helen C. Greisz, for clerical and bookkeeping services rendered the company during the past year.

Upon motion duly made and seconded, the President and Secretary of the company were authorized to prepare a circular letter to be sent to the holders of Voting Trust Certificates, said letter to be sent out after the closing of the company's books for the year and to be accompanied by a financial statement in the same form as the statement which accompanied a letter to the certificate holders sent out under date of February 8, 1938.

Mr. Boyce presented to the Board a letter, dated December 20, 1938, from Mr. John G. Schilpp, the attorney for Mr. Harry G. Pappas, addressed to Messrs. Julius Mintz and William M. Passapae, a copy of which said letter is attached to these minutes. Upon motion duly made and seconded, the Board unanimously rejected the proposals contained in Mr. Schilpp's letter, but authorized the President, Mr. Boyce, to attempt to negotiate a new lease with Mr. Pappas at a rental of $10,000 per annum, said lease to expire on October 31, 1940 and to

contain the same terms and conditions as the present lease, except that the upper floors of the Baltimore terminal property would be included in the lease.

Mr. Boyce and Mr. Block reported informally upon the Bus Company which was using the Baltimore terminal property under an arrangement with Mr. Pappas, and Mr. Boyce further stated that, although Mr. Mintz had endeavored to find out what rentals Mr. Pappas was receiving from his sub-leases, he had been unable to obtain this information to date.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

101 Know all men by these presents: That we, the undersigned stockholders of the W., B. & A. Realty Corporation, a Maryland corporation, do hereby nominate and appoint Heyward E. Boyce and Robertson Griswold, or either of them, as and for our lawful proxies or proxy, to vote the number of shares of said Company standing in our names on the books thereof at the annual meeting of said Corporation to be held on Monday, January 23, 1939, at 11:00 o'clock a. m., or at any adjourned meeting thereof, upon any and all matters which may come before said meeting, as fully and completely as we might do if present in person. We hereby ratify and confirm any and all acts done by said proxies or either of them for and on our behalf.

As witness our hands and seals this 21st day of January 1939.

Witness:

ROBERTSON GRISWOLD.
Robertson Griswold.
HELEN C. GREISZ.
Helen C. Greisz.

HEYWARD E. BOYCE. [SEAL]
SIMON J. BLOCK. [SEAL]
JOHN C. LEGG, Jr. [SEAL]
T. STOCKTON MATTHEWS. [SEAL]

102 BALTIMORE, MARYLAND, *January 23, 1939.*

The annual meeting of stockholders of the Washington, Baltimore and Annapolis Realty Corporation was held at the principal office of the Corporation, Maryland Trust Building, in the City of Baltimore, State of Maryland, on January 23, 1939, at 11:00 o'clock A. M.

There were present Messrs. Heyward E. Boyce and Robertson Griswold, proxies representing Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews, Voting Trustees under Voting Trust Agreement dated March 18, 1936,

said Voting Trustees holding all of the issued and outstanding stock of the corporation.

Mr. Block presided at the meeting, and Mr. Griswold acted as Secretary.

The minutes of the last annual meeting of the stockholders, held on January 24, 1938, were read and approved.

The proxy from the Voting Trustees, running to Messrs. Boyce and Griswold, was filed and was ordered attached to the minutes of this meeting.

The Chairman thereupon called for nominations as Directors of the corporation for the ensuing year until the next annual meeting of stockholders. Thereupon, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews were nominated as Directors. There being no other nominations, the same were declared closed and the Secretary was directed to cast a unanimous ballot for all of said nominees. Such ballot having been cast, Messrs. Simon J. Block, Heyward E. Boyce, John C. Legg, Jr., and T. Stockton Matthews were declared elected Directors of the corporation, to serve until the next annual meeting and until their successors are duly elected and qualified.

103 There being no further business before the meeting, it adjourned.

ROBERTSON GRISWOLD,
Secretary.

104 BALTIMORE, MARYLAND, *January 24, 1939.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company on Tuesday, January 24, 1939, at 11:00 A.M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. Robertson Griswold, Secretary of the Company. Mr. W. Watters Pagon, of The Industrial Corporation, attended the meeting at the request of the President.

Mr. Boyce, President of the company, presided, and Mr. Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held December 28, 1938, were read and approved.

The Secretary announced that there still remained outstanding $25,000 face amount of W., B. & A. certificates of deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$47,513.86
Terminal Real Estate Company	4,225.04
Maryland Development & Realty Company	3,835.69
	$55,474.59

Mr. Boyce requested Mr. Legg to take the chair, and Mr. Legg thereupon called for nominations for office of President, Vice President, Secretary and Treasurer. Upon motions duly made and seconded, Mr. Heyward E. Boyce was nominated as President, Mr. Simon J. Block was nominated as Vice President, and Mr. Robertson Griswold was nominated as Secretary and Treasurer. There being no further nominations, said nominees were unanimously elected to the respective offices to which they had
105 been nominated, to serve until the next annual meeting of the Board of Directors and until their successors are duly elected and qualified.

The Chairman then stated that he had been advised that the Title Company employed by the Capital Transit Company of Washington, D. C., to search the title to the land which this corporation agreed to deed to the Capital Transit Company, located on Bennings Road, Washington, D. C., had completed the search of this title, and that the consummation of the settlement of the condemnation award which was agreed upon by this corporation and the Capital Transit Company will take place within the near future. Under the terms of this settlement this corporation agreed to deed to the Capital Transit Company the property having an area of approximately 25,875 square feet, located on Bennings Road, Washington, D. C., and the Capital Transit Company agreed to turn over to this corporation the proceeds of the condemnation award in the amount of $43,806.36, less the cost of the condemnation proceedings and less the sum of $13,307.50, representing the share of damages to be paid to the Capital Transit Company on account of the removal of the Loop owned by the Capital Transit Company. A form of deed by which this corporation is to transfer the property on Bennings Road agreed to be transferred to Capital Transit Company was presented to the meeting.

Upon motion duly made, seconded and unanimously carried, it was

Resolved: That the President or Vice President and Secretary of this corporation be and they are hereby authorized and directed to execute under the corporate seal of this corporation a deed to Capital Transit Company of Washington, D. C., of certain property owned by the corporation on Bennings Road, Washington,

D. C., consisting of approximately 25,875 square feet, in the form of deed as submitted to this meeting, in consideration of the consummation of the settlement agreed upon by this corporation and Capital Transit Company pertaining to the division of the condemnation award with respect to the property owned by this corporation.

106 The Secretary called the attention of the Board to the proposal, mentioned in the minutes of the last meeting, that we convey to the Baltimore and Annapolis Railroad Company, without consideration, a parcel of ground situate in the vicinity of Round Bay Station and owned by the Maryland Development & Realty Company. Mr. Pagon described this property as being triangular in shape with two circular sides of approximately 100 feet each, and stated that in his opinion the property was of no value. However, the Board of Directors decided to take no further action on its disposal at this time.

Mr. Boyce presented to the Board a letter from Mr. Julius Mintz, dated January 21, 1939, with respect to our entering into a new lease with Harry G. Pappas, Inc., covering the Baltimore terminal property at Howard and Lombard Streets. The Board of Directors unanimously approved the execution of a new lease upon the terms and conditions set forth in Mr. Mintz's letter, a copy of which was ordered attached to these minutes, and the secretary was instructed to advise Mr. Mintz accordingly, and to request him to prepare a form of new lease and submit the same to our counsel, Mr. Moss, for his approval.

The Secretary called the attention of the Board to the fact that Mr. Arthur G. Dezendorf, the lessee of a portion of our Washington terminal property, owed the company for two and one-half months back rent. Mr. Moss stated that he had had this matter up with Weaver Brothers and with Mr. Dezendorf, and that Weaver Brothers had suggested that the filing of a suit against Mr. Dezendorf be postponed until March 15th, at which time it was expected that the sale of the entire property to the

107 Greyhound Terminal of Washington, Inc., would be consummated. The Board requested Mr. Boyce to obtain through some Washington bank a statement regarding the financial responsibility of Mr. Dezendorf, after which the President and our counsel, Mr. Moss, were authorized to take such further action as they deemed advisable.

The Secretary presented to the Board a bill from The Industrial Corporation for $2,598.25, covering services rendered for the period of one year from October 31, 1937, to October 31, 1938. After discussion, during which Mr. Pagon withdrew from the meeting, the President was requested to consult Mr. G. Harvey

Porter, the Vice President of The Industrial Corporation, and Mr. Pagon with regard to this bill, with particular reference to obtaining some sort of an estimate as to the probable cost of additional services to be rendered to us in the future.

The Secretary presented to the Board of Directors a proposed form of circular letter to be sent out to the holders of voting trust certificates, which said letter was to be accompanied by a cash receipts and expenditures statement for the calendar year 1938. At the suggestion of the President, the Secretary handed to each member of the Board of Directors a copy of the said proposed letter, with the request that each of them consider the same carefully and communicate to the Secretary any suggested changes or amendments which they thought advisable.

With respect to the sale of a portion of our right-of-way to the State Roads Commission, Mr. Moss made a statement as to the present situation and also pointed out to the Board certain legal questions which were involved therein. Mr. Moss stated that he understood that Governor O'Conor would appoint an independent commission to investigate and report to him on the question of the advisability of the State acquiring our
108 right-of-way and that in his opinion, the Governor would take final action in accordance with the recommendations of such a commission.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

109

JULIUS MINTZ

1009 CALVERT BUILDING

Baltimore, Md., January 21, 1939.

Mr. HEYWARD E. BOYCE,
Maryland Trust Company, 18 S. Calvert Street, Baltimore, Md.

DEAR HEYWARD. After several meetings with Mr. Schilpp and his client, Pappas, the matter has been boiled down to this point. We will give him a two-year lease from April 1, 1939, at monthly rental of $833.33 for the 1st year and monthly rental of $850.00 for the 2d year.

This offer does not include the upper floors of the Howard and Lombards Sts. building and is subject to all of the terms of the now existing lease, with the exception that we do not participate in the rental being paid to Pappas by the Safeway Trails, Inc. but if Pappas rents to any other Bus Companies, then we are to receive the same proportion of rent that he is obligated to pay us

under the present lease. In other words, we receive half of any income derived from renting space in the terminal or adjacent thereto.

I would recommend that we close on above basis as it is about the best that could be done under the circumstances. Under Pappas lease he makes all interior repairs, etc., which is quite an item and just at this time the interior requires a thorough painting. In connection with the latter, I would suggest that your Board authorize the painting of exterior woodwork, etc., and cleaning of the upper floor windows, floors, etc., to preserve the property and have it look presentable when we show the premises to prospects. We have a representative of the Social Security Board looking at the second floor this week. Am trying to make a deal with them, as you know, Washington passes on the matter, but have hopes I may land them.

There is no chance of selling to Pappas at this time, so the best thing to do under the circumstances is to make the lease, which is flexible as far as we are concerned, and endeavor to secure a purchaser.

Very truly yours,

(Sgd.) JULIUS MINTZ.

110 BALTIMORE, MARYLAND, *March 10, 1939.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company on Friday, March 10, 1939, at 10:30 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, T. Stockton Matthews, and John C. Legg, Jr., constituting the entire Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. Robertson Griswold, Secretary of the company. Mr. W. Watters Pagon, of The Industrial Corporation, attended the meeting at the request of the President.

Mr. Boyce, President of the company, presided, and Mr. Griswold, Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held January 24, 1939, were read and approved.

The Secretary announced that there still remained outstanding $25,000 face amount of W., B. & A. Certificates of Deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$66,767.10
Terminal Real Estate Co.	4,218.66
Maryland Development & Realty Co.	3,835.69
	$74,821.45

The Secretary announced that the company had received from the Capital Transit Company the sum of $28,346.26 in full settlement of the share of the W., B. & A. Realty Corporation in the proceeds of the condemnation proceedings affecting our property at 15th and "H" Streets, N. E., Washington, D. C., said payment having been made in accordance with an agreement heretofore entered into between the Capital Transit Company and the W., B. & A. Realty Corporation, and approved by the Board of Directors of the W., B. & A. Realty Corporation.

111 With regard to the claim of the W., B. & A. Realty Corporation against Arthur G. Dezendorf, for arrears in the rental due under Mr. Dezendorf's lease of a portion of the Washington terminal property, the Secretary announced that the sum of $1,872.08 had been paid on our claim, representing the October 1, 1938, rental. Mr. Moss stated that Mr. Dezendorf had advised him that he would forward a check for a portion of the balance due not later than March 15th, and that he, Mr. Moss, had advised Mr. Dezendorf that unless we received this payment by the end of next week, it would be necessary for the W., B. & A. Realty Corporation to bring suit.

In regard to the bill of The Industrial Corporation for $2,598.25, for services rendered from October 31, 1937, to October 31, 1938, the Board approved the payment of this bill. The Board also approved the payment to The Industrial Corporation of their bill covering expenses amounting to $90.32. Mr. Boyce stated that, in accordance with the request of the Board of Directors, at its last meeting, he had talked to Mr. G. Harvey Porter, the Vice President of The Industrial Corporation, relative to any charges which might be made for future services, and that Mr. Porter had advised him that he felt that a further accomplishment fee should be paid by us at a later date. The Board of Directors, however, by a resolution duly made, seconded and carried, decided that Mr. Porter be advised that, in the opinion of the Board, the matter of the payment of any further accomplishment fees had been settled by our payment to The Industrial Corporation of $5,000 on December 20, 1937, and that the Board saw no reason why it should give favorable consideration to further requests on the part of The Industrial Corporation for the payment of additional accomplishment fees.

112 Mr. Pagon and Mr. Moss reported to the Board on the present situation with regard to the sale of our rights-of-way to the State Roads Commission. Mr. Moss stated that he felt that the final decision as to whether our rights-of-way would be purchased rested largely on the legal opinion which was being pre-

pared by Mr. Thomas F. Jenifer, the Special Assistant Attorney-General for the State Roads Commission. Mr. Moss further stated that he was cooperating with Mr. Jenifer in every way possible.

The President announced that the officers of the corporation had extended the time for the final settlement of the sale of the Washington terminal property to Greyhound Terminal of Washington, Inc., from March 14, 1939 to March 28, 1939, with interest on the unpaid balance of $490,000, at the rate of 4% from March 14th to the date of final settlement, and this action on the part of the officers was ratified and approved.

Mr. Pagon stated that he had agreed to sell to the Consolidated Gas Electric Light & Power Company a strip of land, consisting of about 1½ acres, at Naval Academy Junction, at the price of $207 per acre, which was the same price that the Gas Company had paid for a similar strip of land in the same locality. Mr. Pagon furthermore stated that he had made this sale upon the condition that we would have the right to install railroad tracks across the property to be sold for the purpose of a railroad siding into the balance of our property. The sale on the terms stated by Mr. Pagon was thereupon ratified and approved.

The Board approved the payment of the bill of Messrs. Littlepage & Littlepage, amounting to $1,529.50, covering their
113 legal services and expenses in connection with the condemnation proceedings at 15th and "H" Streets, NE., Washington, D. C.

The Secretary announced that the option granted to Messrs. Frames & Reipe covering our property at Naval Academy Junction had expired on February 26th, and that no request for an extension of the option had been received. Upon motion duly made, seconded and carried, it was resolved that if such a request were made, any decision with regard thereto should be left to the discretion of the President of the corporation.

Upon motion duly made and seconded, the following resolution was unanimously passed:

Resolved: That the President or Vice President and Secretary of this Corporation be and they are hereby authorized and directed to execute under the corporate seal of this Corporation a deed to Greyhound Terminal of Washington, Inc., of certain property owned by the Corporation located at New York Avenue and 12th Street, Washington, D. C., and more particularly described in the form of deed as submitted to this meeting, in consideration of the sum of five hundred and fifteen thousand dollars ($515,000), of which twenty-five thousand dollars ($25,000)

has been paid on account and the balance is to be paid in cash at the time of settlement.

Further Resolved: That Heyward E. Boyce, the President of this Corporation, be and he is hereby appointed attorney-in-fact for the Corporation and in its name to acknowledge and deliver this deed.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

114 BALTIMORE, MARYLAND, *April 5, 1939.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the office of Mr. Heyward E. Boyce, Pres., in the Maryland Trust Company, on Wednesday, April 5, 1939, at 10:30 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, T. Stockton Matthews, and John C. Legg, Jr., constituting the entire Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. Robertson Griswold, Secretary of the company. Mr. W. Watters Pagon, of The Industrial Corporation, attended the meeting at the request of the President.

Mr. Boyce, the President of the company, presided, and Mr. Griswold, the Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held March 10, 1939, were read and approved.

The Secretary announced that there still remained outstanding $25,000 face amount of the W., B. & A. Certificates of Deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$533,615.77
Terminal Real Estate Company	4,218.66
Maryland Development & Realty Company	3,835.69
	$541,670.12

In connection with certain back rentals, amounting to $2,808.12, owing to the corporation by A. G. Dezendorf, Mr. Moss requested authority to place this matter in the hands of a Washington attorney for suit, and the Board approved the taking of such action.

Mr. Moss announced that there were no further developments in connection with the sale of certain of our rights-of-way to the State Roads Commission, but that he understood that Mr. Jenifer's report on the title examination was about ready to be submitted to Governor O'Conor, who would probably take no action

thereon until after various legislative matters connected
115 with the recent meeting of the General Assembly had been disposed of.

The Secretary reported on the final settlement of the sale of the Washington terminal property, at 12th Street and New York Avenue, to Greyhound Terminal of Washington, Inc., and submitted to the Board a copy of the settlement sheet which was ordered attached to these minutes. Mr. Moss also called attention to the fact that the company operating a restaurant in the terminal building had gone into bankruptcy, which had interfered with our giving possession of the entire property to Greyhound, but that he had entered into an agreement with Greyhound in final settlement of this matter, a copy of which agreement is also attached to these minutes.

The Secretary called to the attention of the Board the resolution which had been passed on January 7, 1938, which said resolution provided for an annual fee of $900 to Mr. John R. Colgan, who has been acting as auditor for the corporation. Inasmuch as Mr. Colgan was still acting in this capacity, the Secretary requested that the same arrangement continue for the year 1939, and the Secretary was thereupon authorized to employ Mr. Colgan for the current year on the same basis, but was requested to bring before the Board, at an appropriate time, the question of such compensation for the year 1940.

The Secretary presented to the Board the bill of Semmes, Bowen & Semmes, for $7,000, covering legal services from December 1937, to April 1939, and the payment of this bill was approved, as was also the payment of the firm's out-of-pocket expenses amounting to $114.85.

The Secretary presented to the Board an estimate prepared by Mr. Colgan showing the amount which, in his opinion, was available for the declaration of a dividend to the holders of Voting Trust Certificates. After discussion, the Board declared a dividend of $65 per each Voting Trust share, said dividend to be payable on April 20, 1939, to holders of record on April 15, 1939.

116 After discussion of the compensation which has been received, since the organization of the corporation, by the officers and the members of the Board of Directors, the Board voted that additional compensation in the amount of $2,500 should be paid to each.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

117 THE DISTRICT TITLE INSURANCE CO.

THE LAWYERS TITLE INSURANCE CO.

THE WASHINGTON TITLE INSURANCE CO.

1413 EYE STREET, N.W.

Washington, D. C., March 28th, 1939.

WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORPORATION

Case No. 261,110

In the matter of sale of lots in Square 318

By price of property		$515,000.00
By insurance no adjustments.		
To deposit	25,000.00	
Taxes accrued to 6/30/39 @ $10,717.46 per year		3,155.69
Held by Title Company for perfection of title to Lot 26	500.00	
Commission ½ Wm. Martien & Co., Baltimore.		
½ Weaver Bros. Inc.	15,000.00	
½ Revenue stamps on deed	257.50	
To Balance	$477,398.19	
	$518,155.69	$518,155.69

118 It is understood and agreed by and between W., B. & A. Realty Corporation and Greyhound Terminal of Washington, Inc., that the sum of $707.77 representing interest from March 14, 1939, to March 28, 1939, on the balance of the purchase price of the property known as Washington Terminal property, shall be retained by the District Title Insurance Company and disbursed by them as follows:

If the W., B. & A. Restaurant, Inc., which still occupies a portion of said terminal property has vacated said property and surrendered possessions thereof on or before ten days from the date hereof, said sum of $707.77 shall be immediately paid by the Title Company to W., B. & A. Realty Corporation.

If the said tenant has not vacated the property and surrendered possession within said ten-day period, then the sum of $50.55 per day accounting from April 7, 1939, shall be paid to the Greyhound Terminal of Washington, Inc. until the tenant has vacated or surrendered possession, or until all of the said sum retained shall have been disbursed, whichever shall first occur.

Any balance on hand after payment of any such accrued interest to the Greyhound Terminal of Washington, Inc. and after the

tenant has surrendered possession shall be paid over to W., B. & A. Realty Corporation.

In no event shall W., B. & A. Realty Corporation be liable for more than the said $707.77.

Since title is now being transferred to Greyhound Terminal of Washington, Inc., counsel for this corporation will cooperate in every way and take such steps as may be necessary in an effort to effect the prompt eviction of the tenant.

The additional sum of $500.00 is being retained by the Title Company for the purpose of immediately taking steps to perfect of record the title to lot No. 26 included in the property being sold, it being estimated that the cost thereof shall be approximately $300.00. Any balance not required to clear said title of record shall be paid over to W. B. & A. Realty Corporation.

March 28, 1939.

AMBLER H. MOSS,
Atty. for W., B. & A. Realty Corp.
(SIGNED) CHRISTOPHER B. GARNETT,
Atty. for Greyhound Terminal of Washington, Inc.

119 BALTIMORE, MARYLAND, *December 15, 1939.*

A meeting of the Board of Directors of the Washington, Baltimore and Annapolis Realty Corporation was held in the Board Room of the Maryland Trust Company on Friday, December 15, 1939, at 11:00 A. M.

There were present Messrs. Heyward E. Boyce, Simon J. Block, John C. Legg, Jr., and T. Stockton Matthews, constituting the entire Board of Directors, Mr. Ambler H. Moss, of counsel, and Mr. Robertson Griswold, Secretary of the company. Mr. W. Watters Pagon, of The Industrial Corporation, attended the meeting at the request of the President.

Mr. Boyce, the President of the company, presided, and Mr. Griswold, the Secretary of the company, acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held April 5, 1939, were read and approved.

The Secretary announced that there still remained outstanding $19,000 face amount of W., B. & A. Certificates of Deposit.

The Secretary stated that the cash balances in the various accounts, as of this date, were as follows:

W., B. & A. Realty Corporation	$82,104.09
Terminal Real Estate Company	3,665.99
Maryland Development & Realty Company	3,810.69
	$89,580.77

The Secretary reported the collection of the back rentals, amounting to $2,808.12, from Mr. Arthur G. Dezendorf.

Upon motion duly made and seconded, the Board approved the reappointment of Mr. John R. Colgan as Auditor for the corporation for the year 1940, the salary for said year to be the sum of $600.

Upon motion duly made and seconded, the sum of $150 was voted as compensation to Miss Helen C. Greisz, for secretarial services during the year 1939.

120 The Secretary submitted to the Board a statement, under date of December 4, 1939, from Mr. John R. Colgan, the corporation's Auditor, which said statement was accompanied by certain figures indicating that the corporation was now in a position to declare a dividend of $3 per each Voting Trust share. Whereupon, upon motion duly made, seconded and carried, it was

Resolved, That a dividend of $3 per each voting trust share be declared upon the outstanding voting trust certificates of the corporation, said dividend to be payable December 27th to holders of record December 18, 1939.

With reference to the sale of the corporation's right-of-way to the State Roads Commission, Mr. Pagon reported that he had had several conferences with the Chairman of the Commission and that he felt that progress was being made.

The Board approved the payment of the bill of the Industrial Corporation for $4,530.35, for professional services rendered the corporation for the period from October 31, 1938, to October 31, 1939; and also approved the payment of the bill of Julius Mintz, for $144, for services rendered in procuring a further tax assessment reduction of $10,000 on the corporation's Baltimore terminal property.

Mr. Pagon reported that he had entered into an agreement with Mr. J. D. Lazenby to sell off the corporation's street frontage at the Naval Academy Junction in building lots for stores and houses, and this action was approved by the Board.

Mr. Boyce reported that we had received a proposition in connection with our White House terminal property at Benning Road and Maryland Avenue, Washington, D. C., the acceptance of which said proposition had been strongly recommended by Weaver Bros. and Wm. Martien & Co., Inc. Mr. Moss explained to the Board the terms of the proposed contract for the sale of this property to Mr. Louis Berman, of Washington, D. C., who had

offered to purchase this entire tract, consisting of 83,282
121 square feet, in parcels, the transaction to take the form of a contract of sale with no deed, with payments to be made by Mr. Berman to the corporation as parcels of the property are released at certain stated release values. Mr. Moss stated that the aggregate consideration would amount to approximately $108,000, of which $1,000 would be paid in cash at the signing of the contract, the sum of $1,500 to be paid in cash thirty days thereafter, and an additional sum of $2,500 in cash upon the expiration of 120 days after the signing of the contract. In addition, Mr. Berman would contract to pay the corporation, within 60 days after the execution of the contract, the sum of $12,650, upon payment of which he would receive a release of a parcel of the property consisting of 11,500 square feet. Mr. Moss also stated that Mr. Hechinger, the owner of the property adjoining ours, had at one time indicated that he might be willing to pay us the sum of $75,000 in cash for our entire White House terminal property, if he could arrange the necessary financing, but that since that time Mr. Hechinger had withdrawn from the situation and had stated that he was no longer interested. Mr. Moss also called attention to the fact that our real estate brokers had stated that, in case of the sale of the property to Mr. Berman, they would only expect payments to be made for their commissions as parcels of the property were released. Upon motion duly made, seconded, and carried, it was

Resolved, That Mr. Berman's proposition be accepted. In seconding the motion, Mr. Matthews stated that he desired a written statement from Martien & Co. and from Weaver Bros. to the effect that, in their opinion, the proposition was a fair one and that they recommended its acceptance by the corporation.

Mr. Moss stated that Weaver Bros. had just received a cash offer of $7,082 being at the rate of $1 per square foot for a parcel of land at the northeast corner of Benning Road and 17th Street, which said property was included in the tract of land which would be under the contract of sale to Mr. Berman. The Board of Di-
122 rectors approved the sale of this parcel for a cash consideration of $7,082 provided, however, that such a sale caused no complications in the consummation of the deal with Mr. Louis Berman.

There being no further business, the meeting adjourned.

ROBERTSON GRISWOLD,
Secretary.

123 *Plaintiffs Exhibit B*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Balance Sheet as at December 31, 1935

ASSETS

Cash		$3,735.90
Real Estate:		
Naval Academy Junction	$3,000.00	
Baltimore Terminal	100,000.00	
Washington Terminal	250,000.00	
15th & H Streets, NE., Washington, D. C.	50,000.00	
West St., Annapolis, Md.	16,000.00	
College Ave., Annapolis, Md.	250.00	
		$419,250.00
Total Assets		$422,985.90

LIABILITIES

Accounts Payable:		
Terminal Real Estate Co.	149.00	
Md. Development & Realty Co.	50.00	
W. B. & A. Bondholders Protective Committee	426,594.53	
		426,793.53
Depreciation Reserve		515.88
Deficit as at December 31, 1935		4,323.51
Total Liabilities		$422,985.90

124 *Plaintiffs Exhibit C*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Balance Sheet as at December 31, 1936

ASSETS

Cash		$22,813.03
Real Estate:		
Naval Academy Junction	$1,860.00	
Baltimore Terminal	100,000.00	
Washington Terminal	250,000.00	
15th & H Streets, NE., Washington, D. C.	50,000.00	
Rights-of-Way and Other	10,036.00	
Total Real Estate		411,836.00
Investments: Stock of Terminal Real Estate Co.		5,000.00
Miscellaneous Accounts Receivable		4,042.72
Total Assets		$443,691.75

LIABILITIES

Capital Stock	$424,941.24
Miscellaneous Accounts Payable	21,129.57
Depreciation Reserve	1,944.45
Surplus—Deficit	4,323.51
Total Liabilities	$443,691.75

125 *Plaintiff's Exhibit D*

Washington, Baltimore and Annapolis Realty Corporation

Balance Sheet as at December 31, 1937

ASSETS

Cash		$16,171.73
Real Estate:		
Naval Academy Junction	1,800.00	
Baltimore Terminal	100,000.00	
Washington Terminal	250,000.00	
15th & H Streets, NE., Washington, D. C.	49,998.00	
		401,798.00
Investment: Stock of Terminal Real Estate Co.		5,000.00
Accounts Receivable:		
Herbert L. Bowen	1,425.90	
Boston Iron & Metal Co.	2,080.74	
		3,506.64
Total Assets		$426,476.37

LIABILITIES

Capital Stock	$424,941.24
Accounts Payable—Collector Internal Revenue	8.50
Depreciation Reserve	3,373.02
Surplus—Deficit	1,846.39
Total Liabilities	$426,476.37

126 *Plaintiff's Exhibit E*

Washington, Baltimore & Annapolis Realty Corporation

Balance Sheet as at December 31, 1938

ASSETS

Cash		$47,157.48
Real Estate:		
Naval Academy Junction	$1,800.00	
Baltimore Terminal	100,000.00	
Washington Terminal	225,000.00	
15th & H Streets, NE., Washington, D. C.	49,998.00	
		376,798.00
Investments: Stock of Terminal Real Estate Co.		5,000.00
Accounts Receivable		280.74
Total Assets		$429,236.22

LIABILITIES

Capital Stock	$424,941.24
Accounts Payable	14.00
Miscel. Unadjusted Credit	100.00
Depreciation Reserve	4,801.59
Surplus—Deficit	620.61
Total Liabilities	$429,236.22

127 *Plaintiff's Exhibit F*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Balance Sheet as at December 31, 1939

ASSETS

Cash		$56,929.79
Real Estate:		
Naval Academy Junction	1,355.87	
Baltimore Terminal	100,000.00	
15th & H Streets, NE., Washington, D. C.	20,651.74	
		122,007.61
Investment: Stock of Terminal Real Estate Company		5,000.00
Accounts Receivable: Boston Iron & Metal Company		280.74
Total Assets		$184,218.14

LIABILITIES

Capital Stock	$178,259.09
Accounts Payable: Collector of Internal Revenue	15.50
Misel. Unadjusted Credit	100.00
Depreciation Reserve	6,230.16
Surplus—Deficit	386.61
Total Liabilities	$184,218.14

128 *Plaintiff's Exhibit G*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Statement of Receipts and Disbursements for Year 1935

RECEIPTS

Rental of Property	$5,495.82	
Rentals Collected for Terminal Real Estate Co.	159.00	
Rentals Collected for Maryland Dev. & Realty Co.	75.00	
Reimbursement from tenants for electric expense	41.91	
Total Receipts		$5,771.73

DISBURSEMENTS

Fire insurance premiums	$1,169.35	
Commission paid on rentals collected	253.13	
Legal expenses	125.50	
Ground rents on Baltimore City property	240.00	
Water rents	149.30	
Expense for electricity	43.91	
Elevator inspection fee	12.00	
Repairs to property	1.64	
Photo prints of Baltimore Terminal	6.00	
Franchise tax paid for Terminal Real Estate Co.	10.00	
Francise tax paid for Md. Dev. & Realty Co.	25.00	
Total Disbursements		$2,035.83
Cash Balance December 31, 1935		$3,735.00

129 *Plaintiff's Exhibit H*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Statement of Receipts and Disbursements for Year 1936

RECEIPTS		
Cash balance January 1, 1936	$3,735.90	
Rental of property	35,550.51	
Proceeds from sale of property	87,790.74	
Interest received	1,040.00	
Accounts Receivable from Terminal Real Estate Company	3,238.28	
Total Receipts		$131,355.43
DISBURSEMENTS		
Ground rents on Baltimore City properties	$1,503.16	
Commissions on rentals collected	1,745.28	
Commissions on sale of property	1,541.25	
Repairs to property	1,573.89	
Insurance	3,451.37	
Stationery and printing	539.25	
City, State, and County Taxes	24,420.62	
Federal Capital Stock Tax	6,000.00	
Interest paid	588.40	
Engineering expense	5,635.00	
Legal expenses	17,307.60	
Fees paid Bondholders Protective Committee	16,838.41	
Expenses of Maryland Trust Company	2,321.29	
Cost of property for Penn. R. R. Co.	21,748.00	
Auditing, Bookkeeping & Stenographic expenses	750.00	
Payments made for Terminal Real Estate Company	3,387.28	
Payments made for Md. Dev. & Realty Company	50.00	
Miscellaneous	142.60	
Total Disbursements		$108,542.40
Cash Balance December 31, 1936		$22,813.03

130 *Plaintiff's Exhibit I*

WASHINGTON, BALTIMORE AND ANNAPOLIS RAILROAD COMPANY

Statement of Receipts and Disbursements for Year 1937

RECEIPTS		
Cash balance January 1, 1937	$22,813.03	
Rental of property	48,131.00	
Proceeds from sale of property	36,819.69	
Interest received	90.54	
Received from subsidiary companies from sale of property	32,852.55	
Miscellaneous	137.52	
Total Receipts		$140,853.33

DISBURSEMENTS

Engineering advice and services	$10,963.65
Legal fees and expenses	4,139.90
Depositary fees and expenses	15,362.45
City, State and County taxes	23,386.92
Federal Capital Stock tax	5,985.00
Federal Income tax	1,254.78
Salaries of Officers	1,900.00
Salaries of Employees	225.00
Directors fees	160.00
Auditing, Bookkeeping, & Stenographic expense	1,435.00
Federal Social Security taxes	9.75
Insurance premiums	1,920.20
Due subsidiary companies from sale of property	5,942.98
Repairs to property	749.48
Ground rents on Baltimore City properties	1,578.16
Commissions on rentals collected	2,207.70
Dividend paid to stockholders	47,082.00
Miscellaneous	378.63
Total Disbursements	$124,681.60
Cash Balance December 31, 1937	$16,171.73

131 *Plaintiff's Exhibit J*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Statement of Receipts and Disbursements for Year 1938

RECEIPTS

Cash balance January 1, 1938	$16,171.73
Rental of property	34,206.52
Proceeds from sale of property	8,079.00
Interest received	121.45
Option deposit on Washington property	25,000.00
Option deposit on Naval Academy Jct. property	100.00
Payments of Notes Receivable from sale of property	1,425.90
Total Receipts	$85,194.60

DISBURSEMENTS

Ground rents on Baltimore City properties	$1,578.16
Insurance	1,903.83
City, State, and County taxes	19,507.42
Federal Income tax	2,785.19
Federal Social Security taxes	85.29
Federal Capital Stock tax	3,000.00
Salaries of Officers	1,900.00
Salaries of Employees	1,200.00
Directors fees	400.00
Commissions on rentals collected	1,665.54
Stationery & Printing	48.00
Legal expenses	336.05
Fees & expenses of transfer and disbursing agent	727.59
Expense securing reduction in tax assessment	1,593.00
Bookkeeping, Stenographic and other services	675.00
Repairs to property	503.45
Miscellaneous	38.60
Total Disbursements	$38,037.12
Cash Balance December 31, 1938	$47,157.48

132 *Plaintiff's Exhibit K*

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

Statement of Receipts and Disbursements for Year 1939

RECEIPTS

Cash balance January 1, 1939	$47,137.48	
Proceeds from sale of property	519,830.39	
Rentals collected	18,721.17	
Interest received	724.42	
Guarantee deposit on property rented	100.00	
Refund of excess income taxes paid for 1937	234.00	
Total Receipts		$586,767.46

DISBURSEMENTS

Commissions on rentals collected	$782.14	
Ground rents on Baltimore City property	1,578.16	
Insurance	3,484.19	
City, State, and County taxes	14,455.32	
Salaries of Officers	1,900.00	
Salaries of Employees	1,200.00	
Federal Income tax	738.54	
Federal Capital Stock tax	3,005.00	
Federal Social Security tax	54.50	
Directors fees	160.00	
Special compensation to Directors & Secretary	12,500.00	
Commissions on sale of property	15,004.00	
Legal fees and expenses	9,400.55	
Engineering expenses	7,327.41	
Services of real estate agents	1,264.95	
Fees and expenses of transfer agent	697.46	
Repairs to property	611.86	
Bookkeeping and Stenographic expense	175.00	
Miscellaneous	130.59	
Dividends paid	457,368.00	
Total disbursements		$529,837.67
Cash Balance December 31, 1939		$56,929.79

133 *Plaintiff's Exhibit L*

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's stamp
(Date received)

☐ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF MARYLAND,
City of Baltimore, ss:

Name of taxpayer or purchaser of stamps, Washington, Baltimore, and Annapolis Realty Corporation.

Business address, Maryland Trust Building, Baltimore, Maryland.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Maryland.

2. Period (if for income tax, make separate form for each taxable year) from_____, 19__, to _____, 19__.

3. Character of assessment or tax, Capital Stock Taxes.

4. Amount of assessment, $_____; dates of payment, July 26, 1936, July 17, 1937, July 15, 1938, and Aug. 25, 1939.

5. Date stamps were purchased from the Government_____

6. Amount to be refunded, $17,990, with interest.

7. Amount to be abated (not applicable to income or estate taxes) _____ $_____

8. The time within which this claim may be legally filed expires, under Section 3313 of the Internal Revenue Code, on July 26, 1940.

The deponent verily believes that this claim should be allowed for the following reasons:

See Statement Attached.

(Attach letter size sheets if space is not sufficient)

(Signed) WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORPORATION,
By HEYWARD E. BOYCE, *President.*

Sworn to and subscribed before me this 15th day of November 1939.

CLARENCE B. CLEMENTS,
Notary Public.

(SEE INSTRUCTIONS ON REVERSE SIDE)

CERTIFICATE

I certify that ~~an~~ examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No. ----------

Character of assessment and period covered	List	Year	Month	Account No. or Page	Account No. or Line	Amount assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.
						$		$	
Total						$	Total	$	

I certify that the records of this office show the following facts as to the purchase of stamps:

To Whom Sold or Issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state: Serial number	If special tax stamp, state: Period commencing
					$		

---------- ----------

Collector of Internal Revenue (District)

Claim examined by—

Claim approved by—

COMMITTEE ON CLAIMS

Chief of Division.

Amount claimed--- $-------- ----------

Amount allowed--- $-------- ----------

Amount rejected--- $-------- ----------

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

134 STATEMENT ACCOMPANYING REFUND CLAIM OF WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION

On June 14, 1935, the property of the Washington, Baltimore and Annapolis Electric Railroad Company was sold under fore-

closure proceedings and the Bondholders Protective Committee, representing 92.04% of the First Mortgage Bondholders of the Company, bought in at the sale certain rights-of-way, easements, terminal properties, and other real estate located in Baltimore, Washington and Annapolis, and at various other points along the line of the railroad. The operation of the Railroad was abandoned and the Washington, Baltimore and Annapolis Realty Corporation was incorporated on September 30, 1935, for the purpose of taking over the properties acquired at the foreclosure sale and "to more simply and expeditiously hold and liquidate as promptly as possible the property so purchased." (Quotation from minutes of first meeting of Board of Directors.) The shares of the Washington, Baltimore and Annapolis Realty Corporation were issued to the depositing bondholders of the old Railroad Company.

In view of the depression in real estate values, it was not possible to immediately liquidate the properties without great sacrifice. However, various properties were sold from time to time as favorable offers for them were made, and in 1939 the sale of the most valuable property of the Company, i. e., the Washington Terminal, was made for $500,000.

All funds received from sales, except reserves to cover estimated expenses, were distributed to stockholders, and the only dealings with the property outside of sales and efforts to sell have been the payment of taxes and insurance premiums, the servicing of the property and the leasing of several parcels under leases terminable on short notice. The rentals received from properties which have been rented have been approximately the amount necessary to cover taxes, insurance and other expenses.

The ground upon which this refund claim is filed is that the Washington, Baltimore and Annapolis Realty Corporation has not been carrying on or doing business at any time since its incorporation on September 30, 1935, within the meaning of the applicable provisions of the Revenue Acts of 1935, 1936, 1938 and Section 1200 (a) of the Internal Revenue Code, as amended, relating to taxes on capital stock of corporations, and that therefore said capital stock taxes paid by the claimant were erroneously collected from the claimant.

The claimant respectfully requests that a hearing be granted to its counsel, Messrs. Semmes, Bowen & Semmes, 2500 Baltimore Trust Building, Baltimore, at an early date.

135 *Plaintiffs Exhibit M*

TREASURY DEPARTMENT

WASHINGTON

FEBRUARY 19, 1940.

Office of Commissioner of Internal Revenue.

MT:CST:CCG.
662483.
C1:CST-153365.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION,
c/o Semmes, Bowen & Semmes, 2500 Baltimore Trust Building, Baltimore, Maryland.

GENTLEMEN: Reference is made to your claim for the refund of capital stock tax filed with the collector on November 16, 1939, wherein you request the refund of $17,990.00 capital stock tax paid for the taxable years ended June 30, 1936, to June 30, 1939, inclusive, based on the ground that the corporation has not at any time since its organization been carrying on or doing business within the meaning of the law imposing the capital stock tax but has confined its activities to the protection of its properties and the orderly liquidation thereof as opportunity and judgment dictate.

The company was incorporated under the laws of Maryland on September 30, 1935, for the principal purpose of acquiring at foreclosure sale the property formerly securing the first mortgage five percent bonds of Washington, Baltimore & Annapolis Electric Railroad Company. On June 14, 1935, the property was sold under foreclosure proceedings and the Bondholders Protective Committee, representing 92.04 percent of the first mortgage bondholders of the company, bought in at sale certain rights of way, easements, terminal properties and other real estate located in Baltimore, Washington and Annapolis and at various other points along the line of the defunct railroad company. These properties were transferred to the Realty Corporation and the depositing bondholders received a voting trust certificate representing one share of stock and $50.00 in cash in exchange for each $1,000.00 bond held. The purpose for the formation of the corporation is stated, "to more simply and expeditiously hold and liquidate as promptly as possible the property so purchased."

In addition to the physical property acquired, your company also acquired the entire outstanding capital stock of two subsidiary corporations: The Terminal Real Estate Company of Baltimore City, and the Maryland Development and Realty Company of Anne Arundel County. The properties, where possible, have

been kept rented under short-term leases, the rental received being reported on your income tax returns as follows: 1935, $8,182.51; 1936, $37,585.00; 1937, $48,131.00, and for 1938, $34,296.52. From its real estate business other than rentals, the corporation reported:

136	1936	1937	1938
Gross receipts	$38,373.15	$26,876.18	$8,079.00
Cost of operation	28,712.75	20,366.56	7,225.87
Gross profit	$9,660.40	$6,509.62	$853.13

Its principal expenditures in cost of operation were insurance, and commissions on sales of $15,000.00 in 1939; $1,665.54 in 1938; $2,052.00 in 1937, and $1,514.25 in 1936. Legal expense amounted to $4,139.90 in 1937 and $336.05 in 1938. There was expended for engineering services $5,506.82 in 1936 and $10,963.65 in 1937.

Active negotiations have been conducted throughout the years here under consideration for the sale of the various parcels of real estate and numerous sales have been negotiated, the largest being the terminal property in Washington, D. C., at a price to net the corporation $500,000.00.

At a meeting of the board of directors held December 8, 1937, a resolution was adopted that a management charge of $775.00 be made against the Maryland Development and Realty Company and that a charge of $1,000.00 for similar services be made against the Terminal Real Estate Company. This action clearly indicates that your Company functioned as an active parent company, managing and controlling the affairs of its subsidiaries, as well as pursuing its principal function, the orderly liquidation of its properties.

At the conference in this office held on February 6, 1940, the attention of your attorneys was invited to Article 43, Regulations 64 (1938 Edition), the pertinent portion reading as follows:

"In general 'doing business' includes any activities of a corporation whether it engages in

* * * * * *

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distribution of the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; * * *"

Article 11 of Regulations 50, approved June 21, 1920, provided in part: "A corporation formed to take over miscellaneous stocks, bonds, or other property (as of an estate), to negotiate sales of various items from time to time as opportunity and judgment dic-

tate, and to distribute the profits from time to time as liquidation is effected, is, while so engaged, carrying on or doing business."

Your attention is invited to the case of White Motor Company v. United States, 3 Fed. Supp. 635, certiorari denied 290 U. S. 672, wherein it is stated:

137 "* * * If any doubt existed as to whether the regulations were in the beginning strictly in accordance with the statute, their continuance, without change, and the long-continued practice of departmental construction of the statute, which has been reenacted many times without change, would be sufficient to overcome any attack upon their validity. * * *" Furthermore, these particular provisions of the regulations were found valid in the cases of Edgar Estates Corporation v. United States, 65 Ct. Cl. 415, and Conhaim Holding Company v. Willcuts, 21 Fed. (2d) 91.

It is believed that the following language of the court in the case of New Haven Securities Company v. Bitgood, 87 Fed. (2d) 759, is pertinent to the facts here under consideration:

"If the privileges incident to corporate organization are possessed and exercised, the precise extent of their exercise is not important. * * * Underlying these facts is the important practical consideration that the corporate form was adopted and corporate privileges were exercised to accomplish ends of considerable value and benefit to the taxpayer's principal stockholder. The capital stock tax was meant to embrace this enjoyment of corporate advantages. * * *"

The volume of business done is not important as no particular amount of business is necessary to establish liability to the tax, but here the volume was great, the services of agents, attorneys and engineers were availed of, not occasionally or sporadically, but continuously, and the various transactions are so numerous and of such magnitude as to preclude their treatment as incidental or isolated transactions of no significance.

The Washington, Baltimore and Annapolis Realty Corporation is held to have been engaged in business continuously since September 30, 1935, to and including June 30, 1939, and your claim for refund of $6,000.00 paid for 1936, $5,985.00 paid for 1937, $3,000.00 paid for 1938, and $3,005.00 paid for 1939, is rejected in full.

Respectfully,

GUY T. HELVERING,
Commissioner.

By: D. S. BLISS,
Deputy Commissioner.

cc Baltimore, Maryland.

138 In the District Court of the United States for the District of Maryland

[Title omitted.]

Answer

Filed August 12, 1940

Comes now the defendant by his attorney, Bernard J. Flynn, United States Attorney in and for the District of Maryland, and, in answer to plaintiff's complaint, admits, denies and alleged as follows:

I

The allegations contained in paragraph 1 of plaintiff's complaint are admitted.

II

The allegations contained in paragraph 2 of plaintiff's complaint are admitted, except that it is denied that the taxes were illegally collected.

III

Answering paragraph 3 of plaintiff's complaint, defendant avers that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore demands strict proof thereof.

139 IV

All the allegations contained in paragraph 4 of plaintiff's complaint are denied.

V

All the allegations contained in paragraph 5 of plaintiff's complaint are denied.

VI

All the allegations contained in paragraph 6 of plaintiff's complaint are denied, except defendant admits or avers that a capital stock tax in the sum of $6,000 was paid on July 31, 1936; that a capital stock tax in the sum of $5,985 was paid on July 19, 1937; that a capital stock tax in the sum of $3,000 was paid on August 1, 1938; and that a capital stock tax in the sum of $3,005 was paid on August 30, 1939. Defendant further admits that a claim for refund was filed with the Collector of Internal Revenue on or about November 16, 1937.

VII

The allegations contained in paragraph 7 of plaintiff's complaint are admitted.

VIII

All the allegations contained in paragraph 8 of plaintiff's complaint are denied.

Wherefore, defendant, having fully answered, prays that plaintiff's complaint be dismissed, that judgment be rendered for defendant and for defendant's costs.

BERNARD J. FLYNN,
United States Attorney.

(Copy of above answer mailed to Ambler H. Moss, Esq., of Semmes, Bowen & Semmes, Baltimore Trust Building, Baltimore, Maryland, on August 12, 1940, by Bernard J. Flynn, United States Attorney.)

140 In the District Court of the United States for the District of Maryland

No. 762—Civil

WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORPORATION

vs.

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE

Statement of testimony taken before the Court on October 9, 1940

Filed October 24, 1940

Baltimore, Maryland, October 9, 1940

Before His Honor Judge WILLIAM C. COLEMAN

Appearances

Messrs. Ambler H. Moss and David R. Owen, on behalf of plaintiff.

G. Randolph Aiken, Esq., Assistant United States Attorney and James P. Garland, Esq., Special Assistant to the Attorney General, on behalf of defendant.

(Opening statements were made by counsel for the respective parties.)

141 TESTIMONY ON BEHALF OF PLAINTIFF

Thereupon ROBERTSON GRISWOLD, produced as a witness in behalf of plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Moss:

Q. Mr. Griswold, will you state what office you hold with the Washington, Baltimore & Annapolis Realty Corporation?

A. Secretary and treasurer.

Q. How long have you held that office?

A. I was secretary and treasurer first for the Bondholders' Protective Committee, and when the corporation was formed I went right along with the corporation.

Q. So you have been secretary-treasurer of the corporation ever since its existence?

A. Yes.

Q. When was the Washington, Baltimore & Annapolis Realty Corporation incorporated and for what purpose?

142 A. Incorporated in 1935; I have not got the exact date.

Mr. GARLAND. I would like to make an objection. The question is for what purpose? We object to that on the ground that the charter speaks to that and is the best evidence.

The COURT. Do you want the charter in?

Mr. Moss. The charter is in evidence. I might state that the charter does state that this corporation has been formed and organized primarily for the purpose of acquiring, holding, and liquidating real and personal property acquired at the foreclosure sale.

The COURT. And that charter is in the case?

Mr. Moss. Yes; together with all the Minutes.

The COURT. I think we might just proceed and find out what was done.

Mr. Moss. All right, your Honor.

Q. Mr. Griswold, did the corporation acquire the property of the W., B. & A. Electric Railway Company?

A. The corporation acquired certain portions of the property which had been bought in by the Bondholders' Protective

143 Committee at the foreclosure sale. The corporation continued on where the Bondholders' Committee left off.

Q. Do you recall about the time of that foreclosure sale?

A. It was in 1935, and the corporation was formed afterwards, but did not start to operate until December 1936, because of the fact that we were waiting for the receiver to file his final report, the receiver of the W., B. & A. We simply carried on where the Bondholders' Protective Committee left off, and we incorporated

because counsel told us it was the best way to hold title to these various pieces of property.

Q. In what manner was this property acquired?

A. It was bought in by the Bondholders' Protective Committee at the foreclosure sale and afterwards transferred by the Bondholders' Protective Committee to the corporation.

Q. What was given to the stockholders of this corporation?

A. At the time the corporation started to operate in December 1936——

Q. The corporation itself?

144 A. Yes; we called in the certificates of deposit which had been issued by the Bondholders' Protective Committee and gave to the bondholders in exchange one share of stock in the Realty Corporation, exchanged for each $1,000 bond, which was held by the bondholders. We also made a distribution of $50 in cash from the distribution to us by the W., B. & A. receiver.

Q. Was that distribution made by the Bondholders' Protective Committee or the corporation?

A. It was money paid to the Bondholders' Protective Committee by the receiver and distributed by the Bondholders' Protective Committee, but the transaction was made simultaneously—we issued the stock and $50 check simultaneously with the calling in of the Bondholders' Protective Committee certificates of deposit.

Q. The Bondholders' Protective Committee and the Board of Directors of the Realty Corporation were the same?

A. Yes; the thing went right along as a continuing operation.

Q. Please state what the activities of the plaintiff corporation have been since the date of its incorporation.

Mr. GARLAND. We object to the question. It is

145 too general.

The COURT. The activities of the——

Mr. MOSS. Of the corporation.

The COURT. That is the issue.

Mr. GARLAND. It is the issue.

The COURT. Who would know better than one of the officers? I do not know whether Mr. Griswold knows more than some other officers, but who would know better than an officer? If some officer does not know, who would know?

Mr. GARLAND. There is no foundation here that Mr. Griswold was operating the company. However, our main objection to the question is that it is too general.

The COURT. I would like Mr. Griswold or some officer to take up each year—there are four years involved, and I would like a statement as to what he or any of the other officers knows as to what the company did.

Mr. GARLAND. We appreciate that and that that is necessary to do. So if that is the object here and Mr. Griswold is qualified, we withdraw our objection.

The WITNESS. Do I understand, your Honor, I am to give
146 a chronological statement of what we have done?

The COURT. I think it would be better to give it for each year involved.

Mr. MOSS. The only other possibility of getting all that evidence in would be this; Mr. Griswold can state what the activities consisted of in a general way, and then state that the Minutes filed as exhibits with the Court consist of all of the activities of the corporation since its formation through the year 1939. I suggest that in order to save the Court's time.

The COURT. Are the Minutes already in the case?

Mr. MOSS. They are in the case and they described in detail every single activity of the corporation. There were various sales made, offers were turned down and some accepted, leases made, and property sold, but everything is in the Minutes, and I think Mr. Griswold made a general statement that the corporation did no other things save as set forth in the Minutes, that would cover the situation.

The COURT. They are in the Minutes, Plaintiff's Exhibit A?

Mr. MOSS. Yes.

147 The COURT. I will allow Mr. Griswold to give a résumé of what he understands the company did on the basis that it is merely an epitome of what the Minutes show, and if the Government don't think the Minutes show that, they have a right to disprove it.

The WITNESS. The company was very anxious to get rid of all its property as quickly as possible in the same way the Bondholders' Protective Committee had been doing. What we wanted to do was to sell and distribute and get out. For that purpose we employed real estate agents, put the property in the hands of real estate agents for sale, both in Washington, Annapolis, and Baltimore. Then we also employed the Industrial Corporation to make a very careful appraisal of all of our real estate and the improvements so that we would know what we should ask for any liquidation, what would be a fair price for the sale. We wanted the best price we could get, and the Industrial Corporation made a very detailed survey not only of our various real estate holdings in the way of railroad stations and shops, and things of that sort, but they also made a careful survey to see what the right-of-way was worth. Then in such cases as we could not see a quick mar-
148 ket for it because of the depressed real estate conditions we entered into leases. We leased the Washington Terminal property to a man who ran a filling station and also for a restau-

rant, in order to get some income to pay our taxes and insurance premiums. Then we leased the Baltimore Terminal property for a parking lot and for a restaurant. The Bondholders' Protective Committee had already sold all the Annapolis properties except one small piece in Annapolis. As to the Naval Academy Junction property, we were not able to rent any of that, except a small portion of it to a man who used it, and the rent which he paid to us we paid back to him as a watchman for the rest of the property. He is our only employee at the Naval Academy Junction. As to the right-of-way we negotiated with the State Roads Commission of Maryland, through Mr. Pagon, of the Industrial Corporation, who was the engineer, and we effected an agreement with the State Roads Commission to sell the complete right-of-way for $80,000, but that has been held up by some legal technicality.

Q. Did you sell some junk to Japan?

A. No. The most of that was bought up at the re-
149 ceiver's sale; that was bought by Mr. Shapiro. All we bought at the receiver's sale was the Washington and Baltimore terminal properties, the right-of-way from Baltimore to Washington, the right-of-way from Annapolis to the Naval Academy Junction, the shops at the Naval Academy Junction, the so-called White House Terminal property in Washington, which was used for the storage of cars, and then some odds and ends of lots at Westport which were in the name of the Terminal Real Estate Company of Baltimore City and the Maryland Development & Realty Company of Anne Arundel County. The W., B. & A. carried those lots in Westport in the name of these two subsidiaries; held title in their names.

By the COURT:

Q. Those were the assets for which your company gave this stock; issued the stock?

A. Yes, sir; some of them.

Q. And $50 additional was simultaneously paid out by the Bondholders' Committee?

A. Yes.

Q. If the Protective Committee had gone ahead they would have had under their management, with the lien on
150 the bonds, the assets you have just enumerated?

A. Identically the same.

Q. And those assets were taken over by your corporation?

A. Yes; because Mr. Jesse Bowen said that we should form a corporation.

Mr. AIKEN. I don't believe you could testify to what someone had told you.

The Court. That is all right. Counsel advised them to form this corporation.

Mr. AIKEN. I assumed that is all you were going to say, anyhow.

By Mr. Moss:

Q. There has been filed with the Bill of Complaint, marked "Exhibit A," a photostatic copy of what purports to be all of the Minutes of the Board of Directors and stockholders of the plaintiff corporation from the date of its incorporation through the year 1939, including its charter, bylaws and certain stock issuing statements and certain letters referred to in the Minutes. Will you state whether or not these documents are authentic and whether or not Exhibit A contains all the Minutes of the Board of Directors and stockholders of the corporation.

151 A. They are authentic and contain all of the minutes. They were taken from the Minute Book of the W., B. & A. Realty Company.

Q. And you filed photostatic copies?

A. Yes.

Q. And they contain all the Minutes of the Board of Directors from the date of this incorporation through the year 1939?

A. Correct.

Q. State whether or not these Minutes set forth in detail all of the activities of the corporation from the date of its incorporation through the year 1939?

A. Substantially. There were a lot of minor activities that were not necessary to include in the Minutes, but they substantially do.

Q. Who are the officers of the W., B. & A. Realty Corporation?

A. Mr. Heyward E. Boyce is president, salary $1,000 a year; I am secretary and treasurer at a salary of $600 a year. Mr. Simon Block, vice-president at a salary of $300 a year, and we have one more employee, Mr. Colgan, auditor. I have forgotten what his compensation is.

152 Mr. COLGAN. $600 a year.

By Mr. Moss:

Q. Has the corporation any separate office of its own?

A. No; we operate from my office in the Maryland Trust Company.

Q. Mr. Griswold, did the W., B. & A. Corporation cause to be sold any of the property of its subsidiaries, the Terminal Real Estate Company?

A. Yes; we have sold a couple of lots that belonged to it. A portion of the property we sold to the B. & O. down there was Terminal Real Estate.

Q. Some of the titles are in the holding companies?
A. Yes.
Q. Which stock you purchased at the foreclosure sale?
A. Yes; we bought the stock of these two companies at the foreclosure sale because they tied up with the general picture of the rights of way. We wanted the rights of way and we bought the stock of those two companies.

By the Court:

Q. There are two of those companies?
A. Yes, sir. One is the Terminal Real Estate Company of Baltimore and the Maryland Development and Realty
153 Company of Anne Arundel County, which were subsidiaries of the W., B. & A. Electric Railway Company.
Q. And your company owns all the stock of those two companies?
A. Yes, sir.

By Mr. Moss:

Q. Have the avails of all of the property owned by the corporation been distributed to the stockholders of the corporation promptly as they have been received from time to time?
A. That is correct. We have paid a liquidating dividend every time we had enough money, holding back a sufficient reserve to meet taxes, insurance premiums, and ground rents. We have right heavy ground rents on some of the property.
Q. Has any money you have received from sales or rentals ever been reinvested?
A. Oh, no.
Q. Have you got a list of the dividends and the dates on which they were declared?
A. I have it right here. Shall I go back over the old Bondholders' Protective Committee?
Q. I do not think that is really important.
154 The Court. That would only be another year.
Mr. Moss. I think you might put that in because it would show what prospects the stockholders have of ever receiving a full amount for their bonds.
The Court. Very well.
A. August 7, 1933, the Bondholders' Protective Committee paid $51 to the holder of each certificate of deposit, $51 per each $1,000 bond. That was from the proceeds of the sale of the Annapolis & Chesapeake Bay Power Company which was owned by the W., B. & A. Electric Railway Company. On December 2, 1936, a dividend of $50 was paid for each $1,000 value of certificates of deposit, as heretofore mentioned, at which time we gave one share of stock in the corporation plus the $50 from the Bondholders' Protective

Committee. The Realty Corporation itself has paid the following dividends: December 24, 1937, $7 for each Voting Trust share. April 20, 1939, $65 for each Voting Trust share from the proceeds of the sale of the Washington Terminal property to the Greyhound interests, and on December 27, 1939, $3 for each Voting Trust share. All the major dividends paid have been from liquidation. Outside of that the dividends are $7 and $3 each.

By Mr. Moss:

155 Q. Do you know whether or not the rentals from this property during any of the taxable years were sufficient to pay taxes, insurance premiums, and other expenses of the corporation?

Mr. GARLAND. We object to that. It is entirely immaterial how much they made off of this property. The tax applies whether they make money or lose money.

Mr. Moss. The only purpose is to show our purpose of liquidation, which the Government contends we were not doing. If we continue to lose money every year——

Mr. GARLAND. Any corporation which continues to lose money never is liquidating. But we don't believe it is of the slig st materiality.

The COURT. I will allow it. I think that is a part of the picture which the Court has to get in order to reach a conclusion.

A. Mr. Moss asked me regarding the taxable years which end June 30, and I cannot give you that. I can tell you that in the three calendar years. According to our books for 1937, 1938, and 1939, in each and every one of those years our net rentals were less than our taxes, premiums on our insurance, and our
156 ground rents; in each one of those three years, and considerably less than when we take into account other expenses.

By Mr. Moss:

Q. Do you know what the present book value of the stock is, approximately?

A. I really don't know; Mr. Colgan, the auditor, can answer that. I prefer not to answer that.

Mr. Moss. I believe that is all.

Cross-examination by Mr. GARLAND.

Q. Mr Griswold, you testified that your salary is $600 a year.

A. That is correct.

Q. In one of the years involved here, additional compensation was paid to the officers and directors, was it not?

A. Once by the Bondholders' Protective Committee and once by the corporation, after the sale of the Washington Terminal property.

Q. Once by the Bondholders' Protective Committee: How much did that amount to?

A. May I refer to the book Minutes?

Q. Yes, sir.

157 A. I believe that appears in one of these statements here. Both of these were paid after due notification to all——

Q. We assume that. We just want to arrive at what compensation was paid.

A. O. K. As Secretatry of the Protective Committee I received $4,000 at the time the Committee was closing its affairs, and it was a final payment on the part of the Bondholders' Protective Committee; $4,000 as extra compensation. That was the closing of the Bondholders' Protective Committee.

Q. Then you refer here to additional compensation paid you by the directors of the plaintiff corporation; what was that?

A. That was after the sale of the Washington Terminal property, I think that was.

The COURT. You refer to it on page 11 of your brief, the Minutes of the meeting of April 5, 1939 where the Board voted that additional compensation in the amount of $2,500 should be paid to the officers and members of the Board.

Mr. Moss. That is correct.

A. I really forgot.

158 By Mr. GARLAND:

Q. I did state that in the brief but it was not exactly clear from the Minutes whether it was actually paid, or whether it was paid to the directors, and I thought your Honor might like a little testimony on that.

A. Yes; it was paid.

Q. Did you receive $2,500 pursuant to that reservation?

A. I did.

Q. Do you know whether or not the other officers of the corporation received $2,500?

A. The other officers and directors received $2,500 apiece. The Board was composed of the same persons as the Bondholders' Protective Committee, and they received that additional compensation. They treated it in the nature of a continuing concern, just going along from the old Bondholders' Protective Committee.

Q. Who were the directors at that time?

A. The directors have been the same all the time, except Mr. Stein died. Mr. Boyce was president of the corporation, Mr. Simon Block was vice president of the corporation, Mr.

159 Stockton Matthews, of Robert Garrett & Sons, Mr. John Legg, of Mackubin, Legg & Company, Mr. Julius Stein, who died.

By Mr. Moss:

Q. He was not living at the time?

A. At the time the last compensation was paid, yes; Mr. Stein was dead at that time.

By Mr. Garland:

Q. Have you named all the directors?

A. Mr. Boyce, Mr. Block, Mr. Matthews, Mr. Legg.

Q. Who are the directors of the Maryland Land & Development Company?

A. They are the same.

Q. Who are the officers of that company; are they the same as the officers of the plaintiff corporation?

A. My recollection is they are the same.

Q. Who are the directors of the Real Estate Development Company of Baltimore City?

A. The same.

Q. Who are the officers?

A. The same.

Q. The exhibits to the complaint show that a management fee was charged by plaintiff to the Maryland Development &
160 Realty Company and to the Terminal Real Estate Company of Baltimore City in the respective amounts of $750 and $1,000; is that correct?

A. That is correct.

Q. Were those fees collected?

A. Yes. We wanted to get more money in the W., B. & A.

Q. What were the services rendered by plaintiff to those two corporations?

A. We had our engineer to go over and appraise that property and measure it, examine it, and tell us what the property was worth.

Q. The plaintiff corporation then completely managed and directed the policies, the absolute control, of the two subsidiary corporations?

A. That is exactly the way it was during the days of the W., B. & A.

Q. That is the way it was during the taxable years?

A. Yes; it has always been that way.

Q. You speak of ground rent; what was that?

A. That is the system here of 99-year leases; renewable forever. Some of the property we bought at the receiver's sale was subject to annual ground rents.

161 Q. Have they then during the taxable years paid rent?

A. Yes; ground rents; that is correct. Under our ground rent system here we did not rent in the ordinary sense of the word any property at all; we paid ground rent.

Q. Was the so-called ground rent redeemable?

A. I don't believe so. I would not say that as a positive statement. My recollection is they are irredeemable. That is my recollection, but I would have to refer to the records. I think Mr. Colgan, the auditor, can tell us.

Q. At the meeting of the Board of Directors, February 9, 1938, the directors approved or directed the sending of a letter, a statement, to all the voting trust certificate holders; is that correct?

A. I will have to check that.

Q. If you please.

A. What is the date?

Q. February 9, 1938.

A. That is correct.

Q. Do you have before you a copy of that statement?

A. I have.

162 Q. There is shown an item of rentals collected, $51,530.79.

A. Right.

Q. Can you tell from what properties the principal part of that rent was collected?

A. I would say that was from the Washington Terminal property.

Q. Was that the property that plaintiff leases to the Washington Terminal Company?

A. No; it was leased to Mr. Diffendorff for a filling station.

Q. I do not make myself clear. This taxpayer arranged and consummated a lease on that particular piece of property; is that so?

A. You mean the lease of the Washington Terminal property by the W., B. & A. Realty Corporation?

Q. Yes.

A. That is correct.

Q. And the W., B. & A. Realty Company arranged and consummated that lease; is that so?

A. Well, the details were handled by real estate men—yes;

163 the lease was signed in the name of the W., B. & A. Realty Corporation.

Q. Approximately, what part of the rental came from that source? I withdraw that question. Did any part of the rental of $51,000 come from leases or rentals that were not arranged for and consummated by this plaintiff?

A. No.

Q. There is an item here of $132?

A. One second. That may not be absolutely correct because I think some of those leases carried over from the Bondholders' Protective Committee.

Q. I want to know what part, if any——

A. I would not be able to answer that without digging into our records. We carried it the same as one company.

Q. You testified that the major part of that $51,000 came from a certain lease of the Terminal Company?

A. Yes.

Q. And that was arranged for by plaintiff.

A. Well, I am not sure whether the Washington lease was entered into by the Bondholders' Committee or the corporation.

Q. Have you any papers here to refresh your recol-
164 lection?

A. I would have to check back to the Minutes.

Q. Referring to your meeting of October 29, 1935, perhaps that will help you; was there a lease authorized at that time?

A. That is correct; to Arthur G. Diffendorff.

Q. What rental?

A. $125,000.

Q. For how long?

A. Five years, subject to 90 days' written notice of cancellation.

Q. Referring to the statement sent to the stockholders, you have engineering, sales, and supervisory services of $14,000?

A. That is right.

Q. What was that?

A. That goes way back to the days of the old Bondholders' Protective Committee when they made a thorough survey of all the property belonging to the W., B. & A. Railway Company and told us exactly how much we should bid on each item of property at the foreclosure sale. They examined all of our records for
165 our title, for the rights-of-way. I have a detailed bill here which I will be very glad to offer.

Q. I do not think that will be necessary.

A. It covers about six or seven pages. It covers a portion of that.

Q. Then this corporation expended $14,000 for the payment of an obligation incurred by the Bondholders' Protective Committee?

A. Yes. We assumed all the obligations of the Bondholders' Protective Committee. If you would like me, I will break this bill down for you, of how much was the Bondholders' Protective Committee and how much was the Realty Corporation.

Q. I do not believe that will be necessary right now. Thank you. Did you assume any of the obligations of the Maryland Development Company?

A. I don't think there were any. If there were, we assumed them.

Q. What about the Terminal Real Estate Company of Baltimore City.

A. I don't believe it had any obligations outstanding, as I recall, but if they did, we assumed them.

166 Q. Did the plaintiff pay any taxes or debts of those two companies?

A. We paid all the taxes where the title was standing in their names. Certainly we paid the taxes.

Q. Referring now to the statement, you have repairs to properties, $751.93 expended by plaintiff. What repairs were necessary?

A. I recall that we had to fix the roof down there at the Baltimore Terminal property. That was one repair. We had to also repair some damage that was done at the Naval Academy Junction by some boys hurting our property.

Q. In other words, to keep your property in rental condition?

A. Not only in rental condition, but we made repairs of damaged property where it had been destroyed by vandals. It was for sale.

Q. You refer to final interest payment on loan, $588. What loan was that?

A. When we bought in all this property at the receiver's sale we only controlled 92.04 of the bonds, that represented 92.04

167 of the bonds. So we had to put up when we bought this property in at the receiver's sale—we could surrender our bonds as partial payment, but we had to borrow some money from the Maryland Trust Company to get enough cash to pay the receiver at the receiver's sale, and as soon as we got some money back from the receiver we immediately liquidated that debt, and that interest item was what the Maryland Trust Company charged us for the loan.

Q. When did you liquidate that debt?

A. I have not the slightest idea.

Q. Do you know the year?

A. No.

Q. Have you anything to tell you that?

A. I don't know. What are you looking at?

Q. I am looking at the statement where it says Final Interest Payment on Loan, $588. Was the loan paid at that time?

A. I suppose so.

Q. How much did you have to borrow?

A. My recollection is somewhere in the neighborhood of $50,000. I would have to check on the books to be accurate.

168 Q. What is this printing bill of $249? Is that for advertising?

A. No; that is for publishing these various circulars where we notified the Voting Trust Holders of what was going on. That was our printing bill. We never advertised.

Q. Was there a subsequent statement sent to your certificate holders after December 2, 1936?

A. We sent out several statements. I have them all here. Which one do you want?

Q. May I see what you have reference to?

A. Yes. Here is a combined statement. It runs from December.

Q. 1936; that is the one we are talking about?

A. Yes.

Q. Let us see some subsequent ones.

A. I am trying to see where it runs from.

Q. From the date of incorporation?

A. No; it goes from the beginning of the Bondholders' Protective Committee. Here is 1938; here is 1939.

Mr. Moss. The auditor would be better qualified to answer some of these questions.

169 The WITNESS. That is the reason I asked the auditor to come here. He is better qualified than I am. He got up all these statements.

Mr. GARLAND. These are attached to your complaint?

Mr. MOSS. Yes.

Mr. GARLAND. That is all that is necessary, then.

Q. Do you have copy of resolution of February 24, 1936?

A. I have it right here.

Q. Will you please explain what is meant there by the purchase of certain equipment from the Boston Iron & Metal Company?

A. The purchase of equipment at a cost of $22,000.

Q. Did this plaintiff purchase any equipment?

A. No. What we did was this. When Shapiro of the Boston Iron & Metal Company bought in all of these transmission lines and rails, a portion of the lines we found out afterwards the Pennsylvania Railroad wanted in order to get into the Bowie Race Track at Odenton. Shapiro had purchased the rails,

170 and in order for us to carry on we had to buy back those rails so they could get into the Bowie Race track. I suppose that is the one you are referring to.

Q. I suppose so. You bought the rails that you refer to at a cost of $22,000.

A. Where is the $22,000?

Q. It appears somewhere in the Minutes.

A. I do not find it. I am still looking for it.

Q. Maybe I am wrong.

A. It says the corporation sold the property in Annapolis for $23,000. Then the next paragraph is:

"Further resolved, that the corporation sell and convey to the Pennsylvania Railroad all of its right, title, and interest in and to that portion of the right of way of the Washington, Baltimore & Annapolis Electric Railroad Company extending from a point not more than 200 feet west of Odenton, through Naval Academy Junction to a point where the main line meets Pope's Creek Branch of the Pennsylvania Railroad; and that the corporation acquire from the Boston Iron & Metal Company, Inc., tracks, rails, ties, angle bars, and steel and wooden bridges for a single track over that portion of the above-mentioned right of way from the dividing point of the Y-track at Odenton to a point 1,000 feet south of the southerly Y-track leading to the Bowie Race Track in Prince George's County, said rails, angle bars, ties, and bridges to be in turn sold to the Pennsylvania Railroad in connection with the sale of the right-of-way."

171. They could not get in there without any tracks. Of course, the Pennsylvania Railroad Company could have gone ahead and bought the tracks without coming to us, right directly from Shapiro, but I suppose they wanted us to handle the whole thing. So we got a price from Shapiro for the rails.

Q. In other words, you bought the rails and equipment and you sold it?

A. We could not have sold our right-of-way without getting the tracks back; we could not sell the Pennsylvania Railway a right-of-way without any tracks, and we had to get the tracks back in order to sell them the right-of-way.

Q. Is plaintiff still in existence?

A. You mean the W., B. & A. Realty Corporation?

Q. Yes.

A. Yes. We still have a lot of odds and ends we are trying to sell. We still have the Baltimore Terminal property. That is the main holding now, the Baltimore Terminal property down here.

Q. That is under lease?

A. Yes; that is a restaurant and a parking space.

Q. Do you have the same lease on there now that you
172 arranged for in 1935?

A. It is to a man named Pappas. He has a restaurant, and also a parking lot in the back.

Q. In other words, that lease has remained there for five years?

A. We sold the property to Pappas, but they found some defects in the title. I forget what the purchase price was, but it was actually sold while it was under lease to Pappas, he wanted to buy it. That was our best bet to liquidate the property. But when they examined the title they found out there was an alley through there which ran practically right through the property, the title to which was in the hands of the heirs of the people living on opposite sides of the alley, and the only way we could get title was to wait long enough to get adverse possession. I think adverse possession runs about a year or so from now. But we could not get title then and the sale fell through. A couple of years from now we will be in position to offer it again for sale.

Q. Then in 1935 you were not in position to liquidate that parcel of property?

A. We did not know it at the time it was sold.

173 Q. But you were not?

Mr. Moss. We object.

A. We sold the property subject to giving a clear title.

Mr. GARLAND. I will withdraw the question.

Q. Did you, Mr. Griswold, have anything to do with the formation of the plaintiff corporation in the beginning?

A. The Bondholders' Protective Committee, I just carried right on as secretary of the Bondholders' Protective Committee and secretary of this corporation.

Q. You are a director of the plaintiff corporation?

A. I am not.

Q. Do you know why it was necessary, or if it was necessary to include in the charter such broad and expansive powers—was there any discussion of that?

A. No. That was prepared by Mr. Jesse Bowen. I have never even read the charter.

Mr. GARLAND. That is all.

The WITNESS. I know we were formed as a liquidating corporation, but I have never read the charter.

174 Redirect examination by Mr. Moss:

Q. Were all the leases made by the corporation subject to termination on short notice?

A. Yes; all of them were. We always had that expressly in mind.

Recross-examination by Mr. GARLAND:

Q. Did plaintiff sell any property here and take back mortgages or trust deeds, or anything of that kind?

A. I think we agreed with Pappas—we did not actually carry through on that basis, but I think we agreed with Pappas to take a purchase money mortgage for part of it. But that fell through. Let me hear that question again.

(The pending question was read by the reporter.)

A. The answer to that is "No."

Q. Trust deeds?

A. No; we did not. We arranged to sell the property to Pappas and take back a purchase money mortgage, but the
175 proposition fell through and we did not.

Q. Did not you sell one parcel of property here for $515,000?

A. No; I wish we had. That was the sale of the Washington Greyhound interests to the Peninsylvania Railroad.

Q. What about that?

A. That was a cash sale. We started off discussing a purchase money mortgage with them, but they did not want to pay all that interest, and it was sold for cash. We never had any purchase money mortgages.

Mr. GARLAND. That is all.

By the COURT:

Q. Mr. Griswold, in round figures, do you happen to know what was the face value of the certificates? When the corporation was formed, how much was owed on the bonds?

A. Does your Honor mean——

Mr. MOSS. The Judge wants to know before the corporation was formed how much had been paid on the bonds?

A. You mean what the Cleveland Trust Company paid
176 in final liquidation of the bonds?

By the COURT:

Q. No. I mean when the corporation was formed they, in effect, took over the obligations of the Protective Committee. Of course, they did not agree they were going to pay the $1,000, but assuming they had to pay the bondholders everything the bondholders were entitled to, what was the balance due on the bonds issued? Do I make myself clear?

A. I can put that in two ways. You see the Cleveland Trust Company liquidated and paid off the nondepositing bondholders. Is that what your Honor means?

Q. I recall that.

A. And they received for each $1,000 bond, each bondholder—I have a memorandum as to that; each bondholder received $175.61.

Q. On the reorganization?

A. No. The ones who kept out of the Protective Committee, yes; the ones who did not deposit were paid off by the Cleveland Trust Company, Trustee, at the rate of $175, from the proceeds of sale.

177 Q. I recall that. Those who went in under this plan, and the formation of your company had, up to that time, got nothing.

A. That is correct. Well, they had gotten the $51 distribution representing the proceeds of the sale of the Annapolis and Chesapeake Bay Power Company. That was paid back in 1933. But that $175.61 includes the $51 paid to nondepositing bondholders also.

Q. What I was getting at is this. In one of the briefs here, on page 23 of the plaintiff's brief, the following statement is made: "Showing a steady decline in the amount of receipts carried in the balance sheet at the end of each calendar year." Then they give the fall in value each year of the amount of real estate.

A. Yes.

Q. That suggested my question which, to put it again in a little different way, is, can you give in round figures what was the face value of the bonds that went in under this plan of liquidation?

A. The bonds that were deposited with us were $6,726,000, actually deposited with the Bondholders' Protective Com-

178 mittee, and that represented 92.04 percent of the entire bond issue which was around eight million and something.

Q. Do you happen to know approximately in round figures what was the appraised value of all of the assets acquired by the Company when it first took over the assets for which it issued the stock?

A. No, sir; I don't recall it. And I don't believe Mr. Colgan will recall that. They were figures which were gotten up for us by the Industrial Corporation. I could call up my office.

Q. I don't think it necessary. Can you give approximately the total amount that has been paid to your company's stockholders who are the bondholders holding this $6,500,000 amount of bonds, what is the approximate total amount that they have gotten to date through the liquidation effected by the company and represented by liquidation dividends paid to them?

A. $176 for each $1,000 bond. That is the total of payment both by the Bondholders' Committee and by the Realty Corporation.

Q. If you take $50 off of that, you get what the Realty Corporation paid.

179 A. You take the $101—you take off $51 for the Annapolis & Chesapeake Bay Power Company, and take the extra $50

off which represented the proceeds of the sale of the property at foreclosure and distributed to us by the receiver.

Q. So the company has only paid $75 itself?

A. That is right.

Q. In liquidation?

A. It is $75.

Q. In liquidation?

A. That is correct.

Q. And you paid that to each $1,000 bondholder?

A. That is correct.

Q. And that means using your figures of $6,726,000 you paid that to 6,726 bondholders?

A. That is correct, your Honor.

Q. If you would multiply 75 by 6,726 you will see the total amount that has been paid off.

A. 6,726 times 75 is the actual amount distributed by the W., B. & A. Realty Corporation but the bondholders theretofore had received 101 per bond from the Old Protective Committee.

180 The COURT. I see. That is the one I want.

(Examination of witness concluded.)

Thereupon JOHN R. COLGAN, produced as a witness in behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Moss:

Q. Are you employed by the Washington, Baltimore & Annapolis Realty Corporation?

A. Yes, sir.

Q. In what capacity?

A. Auditor.

Q. How long have you been auditor of that company?

A. Since 1936.

Q. There has been filed with the Bill of Complaint Exhibits B to K, inclusive, representing the corporation's balance sheet and statement of receipts and disbursements for the years 1935 to 1939, inclusive. Would you please state whether or not

181 these papers are correct statements as shown by the books of the corporation?

A. They are correct, and were taken from the books of the company.

Q. Did you prepare those statements?

A. Yes, sir.

Q. Mr. Colgan, will you state what the present book value of the stock of the W., B. & A. Realty Corporation is?

A. $20.68.

Mr. Moss. I think that is all the questions I have.

Mr. GARLAND. No cross-examination.

By the COURT:

Q. What was that figure?

A. $20.68 is the present book value of the stock.

The COURT. Have you any statement which shows the expenses of the company by each of the years; have you compiled any such statement?

Mr. Moss. Yes; that was filed with the bill of complaint. We have balance sheets as of the end of each calendar year.

The COURT. That is in?

182 Mr. Moss. Yes, sir; and also statements of receipts and expenditures for each calendar year.

The COURT. That is in Exhibit A?

Mr. Moss. That is in Exhibits B to K, inclusive. Exhibit A are the Minutes and Bylaws.

The COURT. I have no other questions.

(Examination of witness concluded.)

The COURT. Is there any further testimony?

Mr. Moss. No, your Honor.

Mr. GARLAND. Defendant has no witnesses.

(Counsel for the respective parties argued to the Court, at the conclusion of which the Court rendered its oral opinion, which is under separate cover.)

(Note: After the rendition of the Opinion, the following occurred:)

Mr. AIKEN. In order to complete the record from the standpoint of the Government, we have prepared certain findings of fact and conclusions of law. I assume they will be overruled, but we would like to offer them.

The COURT. Yes, sir; those will have to be overruled.

183 Mr. GARLAND. Will we be notified in some manner as to the entering of judgment?

The COURT. I will enter the judgment now because, as I say, having reached my conclusion, the fact I may want to edit or elaborate on the Opinon I have rendered is not going to affect the conclusion, and, therefore, ought not to affect the rights of the parties. Of course, I won't prejudice anyone in the matter of appeal. In any event, I shall have this whole matter edited and refiled in the next few days.

Mr. GARLAND. I was just thinking as to our records in Washington, about the date of entering judgment.

The COURT. Judgment is entered now.

(Hearing concluded.)

184 In District Court of the United States for the District of Maryland

No. 762 Civil

WASHINGTON, BALTIMORE & ANNAPOLIS REALTY CORPORATION

vs.

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE

Opinion of court

Filed October 23, 1940

185 COLEMAN, District Judge:

This is a suit for refund of capital stock taxes which the plaintiff has paid and now seeks to recover on the ground they have been erroneously collected. The taxes total $17,990, exclusive of interest, as follows: $6,000 for the fiscal year ending June 30, 1936; $5,985 for the fiscal year ending June 30, 1937; $3,000 for the fiscal year ending June 30, 1938, and $3,005 for the fiscal year ending June 30, 1939.

While four separate Revenue Acts are involved, the language with which we are here concerned, which is contained in the first of them, the Revenue Act of 1935, Section 105 (a), C. 829, 49 Stat. 1014, is not changed in the later acts—merely tax periods and the amount of the tax. The above section of the 1935 Act is as follows: "For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.40 for each $1,000 of the adjusted declared value of its capital stock." The later

186 Acts are: Revenue Act of 1936, Sec. 401 (a) (26 U. S. C. A., Internal Revenue Acts, p. 943); Revenue Act of 1938, Sec. 601 (a), (26 U. S. C. A., Internal Revenue Acts, p. 1139); and Internal Revenue Code, 1939, 26 U. S. C. A., Sec. 1200 (a).

It will thus be seen that the question under each of the statutes presented in the present case is this: Was the plaintiff "carrying on or doing business" for any part of the year in question? I conclude that the plaintiff was not.

There is no real dispute about the facts in the case—merely as to the effect to be given to them in relation to the clause "carrying on or doing business" in the Revenue Acts. It appears that the plaintiff company was incorporated under the laws of Maryland in September 1935, with broad charter powers, including the power to buy, sell, develop, and otherwise deal in land; to loan money,

to conduct a general brokerage business, deal in personal property, acquire other corporations, borrow money, issue bonds, buy stock, and to carry on any general business enterprise authorized under the laws of Maryland. Shortly after its incorporation the plaintiff received from a bondholders' protective committee, which had been operating incident to the receivership
187 and liquidation of the Washington, Baltimore & Annapolis Electric Railroad Company, properties formerly owned by that company. These properties had been acquired by this protective committee at a foreclosure sale, and consisted of certain rights-of-way, easements, terminal properties and other real estate located in Baltimore, Annapolis, and Washington, as well as at other points along the line of the railroad.

While there is rather voluminous testimony as to the various activities of the corporation—in fact all of its activities from its creation down to the present time are in evidence in the form of the entire minutes of stockholders' and directors' meetings of the corporation—the following is believed to be an adequate, accurate résumé of what the corporation did during the years in question: In addition to the acquisition of the railroad's properties from the protective committee, as above explained, the company also acquired at the foreclosure sale the entire capital stock of a realty-holding company which, in turn, owns the entire stock of another realty company, both of which were subsidiaries of the railroad company and performed no function other than that of
188 holding legal title to a small part of the railroad company's real estate. The activities of the plaintiff ever since its incorporation have consisted of owning the properties above referred to, and selling them from time to time or making rentals under short-term leases; paying taxes, insurance premiums, and other expenses incident to such ownership; paying the salaries of its officers (three in number, a president, vice president, and secretary-treasurer), which were at all times nominal, except on one or two occasions when additional compensation in the nature of bonuses was paid in connection with extensive sales; paying attorneys' fees and dividends, the total amount of the latter having been $75.00 per share, the book value of the company's stock as of December 31st, 1939, being $20.68 per share. The company has no office of its own, and besides its three officers, has had no one in its regular employment except an auditor—also on a nominal annual salary.

The plaintiff's sole source of income has been the above-mentioned properties held by it for liquidation, and approximately four-fifths of this income has been realized from sales of the real estate, and the remainder from rental of properties under
189 short-term leases. All net receipts, except reserves for contingencies, have been promptly distributed to stockholders.

Pending distribution, the company's income has always been held by the plaintiff as cash in bank, and not reinvested or otherwise employed for profit. Likewise, the properties belonging to the two subsidiary companies were embraced in the same liquidation policy and the proceeds from their disposition were distributed to the plaintiff, the parent company, as dividends. The only other intercorporate relations consisted of a small service charge made by the plaintiff against the subsidiaries on one occasion, and of several small advances between them. That liquidation of the company's assets has been very materially accomplished is evidenced by the following figures, showing the real estate carried on the company's balance sheet at the end of each of the designated calendar years: December 31, 1935, $419,250; December 31, 1936, $111,856; December 31, 1937, $401,798; December 31, 1938, $376,798; and December 31, 1939, $122,007.61.

I reach the conclusion from the evidence in this case that all the activities of this company were solely related to the liquida-
190 tion of these assets, and that for this reason its stock is exempt from the taxes in question. In short, while neither the Supreme Court nor the Circuit Court of Appeals for this Circuit has yet been called upon to determine whether a purely liquidating corporation of this precise character is exempt from the provisions of the acts in question, I believe the necessary inference from such decisions as do exist, interpreting the clause "carrying on or doing business," or synonymous terminology, require an affirmative answer to this question.

Some two years ago I was called upon to construe the same language, but in relation to a state of facts quite different from those here presented; and while I likewise in that case exempted the taxpayer, and my decision was reversed by the Circuit Court of Appeals (U. S. v. Atlantic Coast Line Co., 99 F. (2d) 6), I find no parallel in the two cases, nor anything in the appellate court's decision even broadly intimating the inclusion of a situation such as the present one. The following resumé statement of facts in the opinion of the Circuit Court of Appeals in that case, 99 Fed. (2d) 6, at p. 9, as modified by the Court's supplemental opinion, denying a petition for rehearing, 99 Fed. (2d) 932, 933, would seem to dispel any possible doubt on this
191 score: "In the year 1914 the plaintiff had virtually concluded the activities for which it was organized and instead of remaining inactive, only collecting the income from its holdings and distributing to the stockholders their share of that income, it was active in seeking to make other profits. Some of its properties were sold and the proceeds reinvested; it purchased

railroad securities, invested in the Polk Phosphate Company, a subsidiary, and during the period in question loaned it money. In the year 1929 its charter was amended as to the powers given it to do business. If, as contended, it had remained practically dormant after the year 1914 the purchase of railroad securities, engaging in the phosphate business, buying and selling Government securities, and lending money, all for a profit, were scarcely consistent with such a condition. The paying of an annual sum of approximately $12,000 to its officers and employees, and the creation of a surplus of $17,000,000 from its profits are not evidences of a dormant corporation."

The latest decision of the Supreme Court most closely related to the present controversy is Edwards v. Chile Copper Company, 270 U. S. 452, where the statutes involved (Revenue Acts of 1916 and 1919) employed the same clause, i. e., "with respect to
192 carrying on or doing business." There it was held that the tax was applicable to a corporation organized for the purpose of holding the stock of a mining corporation, and of issuing and selling bonds secured by pledge of the stock, and furnishing the proceeds from time to time to the other to enable it to carry on its work; other activities of the holding company consisting of maintaining an office, voting the shares, electing directors, lending the proceeds of bonds through a trust company on call loans when not needed for advances to the mining company, collecting interest, etc. At the close of its opinion the Court, through Mr. Justice Holmes, stated (page 456): "The case is not governed by McCoach v. Minehill and Schuylkill Haven R. R. Co., 228 U. S. 295, and United States v. Emery, Bird, Thayer Realty Company, 237 U. S. 28. It is nearer to Von Baumbach v. Sargent Land Company, 242 U. S. 503."

We turn, then, first to the McCoach case, and we find that the Supreme Court there held that a railroad corporation which had leased its railroad to another company (the latter operating it exclusively), but which maintained its corporate existence, collected and distributed to its stockholders the rentals from
193 the lessee and also dividends from investments, was not doing business within the meaning of the Corporation Tax Act of August 5, 1909, the pertinent words of which were "That every corporation * * * shall be subject to pay annually a special excise tax with respect to the *carrying on or doing business by such corporation* * * *." [Italics inserted.] In other words, the language was the same as we have in the statutes here under consideration. The closing part of the opinion in the McCoach case, rendered by Mr. Justice Pitney, contains the

following statement, page 308: "The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business; in which event the investment-income may be added to the business-income
194 in order to arrive at the measure of the tax, and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income and dividing it among its stockholders. *In the former case the tax is payable; in the latter not.*" [Italics inserted.]

I am satisfied that the facts in the present case fall clearly within the second class, as above set forth by the Supreme Court. The paragraph just quoted from the McCoach case was quoted in United States v. Atlantic Coast Line Company, supra; and for the reasons already given, namely, that the Circuit Court of Appeals expressly held that the company involved in that case was not solely a liquidating corporation, I do not think we can reasonably infer that there is anything intended by that decision contrary to the conclusion I now reach.

Each case of this kind must, of course, stand upon its own facts, and sometimes there are border line facts. But not so in the present case. The Supreme Court has laid down the rule. It is more than dicta, it is part of the ratio decidendi of
195 the McCoach case, and is a clear, simple guide.

Turning next to the case of United States v. Emery, Bird, Thayer Realty Company, 237 U. S. 28, to which the Supreme Court also referred in the Edwards case, we find nothing contrary to the conclusion here reached. There the Court held that a realty corporation which did nothing but collect and distribute rent from a specified parcel of land was not "doing business" within the meaning of the Corporation Tax Law of 1909. The Court said (page 32): "The line lies between Cedar Street Co. v. Park Realty Co., 220 U. S. 107, 170, and Zonne v. Minneapolis Syndicate, 220 U. S. 187; the latter case being carried perhaps a little farther by McCoach v. Minehill Railway, 228 U. S. 295. We are of opinion that this case is governed by the last two, and that the decision was right. The question is rather what the corporation is doing than what it could do, 228 U. S. 305, 306. * * *."

It is believed unnecessary to dwell upon the facts in the other, earlier decisions referred to by the Supreme Court in its opinions from which we have just quoted, because their facts are different, and there is nothing in those decisions which can be
196 fairly construed as opposing the conclusion here reached.

There is a wealth of decisions of the district and appellate courts in other circuits on the question of what constitutes "doing business," every case having, of course, different facts. It would unduly protract this opinion, and serve no useful purpose to attempt to review these decisions. Suffice it to note that the four following cases appear to bear striking similarity, on their facts, to the present case, because in each of them the corporation sought to be taxed was found to be engaged solely in the liquidation of its real estate holdings—timber lands—and in each case the corporation was declared exempt. Union Land & Timber Co. v. United States, 65 Ct. Cls. 129, a decision of the Court of Claims; and Clallam Lumber Co. v. United States, (3 cases), 34 F. (2d) 944; 34 F. (2d) 947, and 1940 C. C. H. Tax Service, Vol. 4, Par. 9615 decisions of the District Court for the Western District of Michigan.

Lastly, we have not lost sight of the fact that Treasury Regulations 64 (1936 Edition), Article 43, promulgated under the Revenue Act of 1935, are expressly contrary to the conclusion
197 here reached, and that these regulations have remained in substantially the same form throughout repeated re-enactments of the statutes, from which the Government argues that such administrative construction of the Act should be given the force and effect of law, on the theory that it has thus received implied legislative approval. But it is axiomatic that no administrative interpretation, regardless of the length of its continuance, can give to a statute a meaning which is contrary to binding judicial construction. So to hold would render the courts impotent in such matters. Courts "are not bound to accept the administrative construction of a statute regardless of consequences, even when disclosed in the form of rulings." Estate of Sanford vs. Commissioner, 308 U. S. 39, 52. The words of the statute here involved—"carrying on or doing business"—are not ambiguous or doubtful in the sense that permits the application, blindly, of the rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration, will generally not be disturbed (Brewster vs. Gage, 280 U. S. 327, 336). The words before us have received extensive, definite judicial interpretation by
198 the Supreme Court, and by the Court of Appeals of this Circuit, which must be followed.

A judgment will be entered for the plaintiff, in accordance with this opinion.

WILLIAM C. COLEMAN,
U. S. District Judge.

199 In District Court of the United States for the District of Maryland

[Title omitted.]

Direction to enter judgment

Filed October 9, 1940

To the CLERK:

Enter judgment in the above-entitled case, in favor of the Plaintiff for the sum of Seventeen thousand nine hundred and ninety dollars ($17,990.00) with interest as allowed by law.

WILLIAM C. COLEMAN,
U. S. District Judge.

Date: October 9th, 1940.

Docket entry of judgment

Oct. 9th, 1940. Judgment in favor of the Plaintiff for the sum of Seventeen Thousand Nine Hundred and Ninety Dollars ($17,990.00) with interest as allowed by law, directions to enter judgment filed.

200 In District Court o the United States for the District of Maryland

[Title omitted.]

Findings of fact and conclusions of law as submitted by the Plaintiff and order of court adopting same

Filed November 1, 1940

Comes now the Plaintiff, by its attorneys, Semmes, Bowen & Semmes, and requests the Court to find the following:

Findings of fact

1. Plaintiff was incorporated under the laws of Maryland on September 30, 1935, with broad charter powers, including the power to buy, sell, develop, and otherwise deal in land; to loan money, to conduct a general brokerage business, deal in personal property, acquire the assets of other corporations, borrow money, issue bonds, buy stock, and to carry on any general business enterprise authorized under the laws of Maryland.

2. Plaintiff was organized to acquire certain properties, formerly owned by the Washington, Baltimore and Annapolis Electric

Railroad Company and securing its First Mortgage 5% Bonds, to liquidate them in an orderly manner, and to distribute their avails to its stockholders. These properties consisted of certain rights of way, easements, terminal properties, and other real estate located in Baltimore, Annapolis and Washington, as well as at other points along the line of the railroad.

3. Shortly after Plaintiff's incorporation, it received these properties from a Bondholders' Protective Committee,
201 which represented 92.04% of the said First Mortgage Bonds. This Committee had acquired the properties at the foreclosure sale of the Railroad Company and had been holding them incident to its receivership and liquidation. Upon their conveyance by the Protective Committee to Plaintiff, the depositing bondholders received a Voting Trust Certificate representing one share of stock of Plaintiff in exchange for each $1,000.00 bond held.

4. Included in the properties acquired by the Protective Committee at the foreclosure sale and transferred to Plaintiff was the entire capital stock of a realty holding company which, in turn, owns the entire stock of another realty company, both of which were subsidiaries of the Railroad Company and performed no function other than that of holding legal title to a small part of the Railroad Company's real estate. The properties belonging to these two subsidiary companies were embraced in Plaintiff's liquidation policy, and the proceeds from their disposition were distributed to the parent company as dividends. The only other intercorporate relations consisted of a small service charge made by Plaintiff against the subsidiaries on one occasion and of several small advances between them.

5. The activities of Plaintiff ever since its incorporation have consisted of owning the properties above referred to, and selling them from time to time or making rentals under short term leases; paying taxes, insurance premiums, and other expenses incident to such ownership; paying the salaries of its officers (three in number, a President, Vice President, and Secretary-Treasurer) which were at all times nominal, except on one occasion when additional compensation in the nature of bonuses was paid in connection with extensive sales; paying attorneys' fees and dividends. The total amount of the latter has been $75.00 per share, the book value of Plaintiff's stock as of December 31, 1939; being $20.68 per share. Plaintiff has no office of its own and besides its three officers has had no one in its regular employment except an auditor, also on nominal annual salary.

6. Plaintiff's sole source of income has been the above mentioned properties held by it for liquidation. Approximately

four-fifths of this income has been realized from sales of
202 the real estate and the remainder from the rental of properties under short term leases. All net receipts, except reserves for contingencies, have been promptly distributed to stockholders. Pending distribution, Plaintiff's income has always been held as cash in bank and not reinvested or otherwise employed for profit.

7. All of Plaintiff's activities have been directed toward prompt liquidation of its assets, which has been materially accomplished. The following figures show the amount of real estate carried on its balance sheets at the end of each of the designated calendar years:

December 31, 1935	$419,250.00
December 31, 1936	411,856.00
December 31, 1937	401,798.00
December 31, 1938	376,798.00
December 31, 1939	122,007.61

8. Plaintiff has paid to Defendant capital stock taxes as follows:

July 31, 1936—$6,000 for fiscal year ending June 30, 1936.
July 19, 1937—$5,985 for fiscal year ending June 30, 1937.
Aug. 1, 1938—$3,000 for fiscal year ending June 30, 1938.
Aug. 30, 1939—$3,005 for fiscal year ending June 30, 1939.

Plaintiff respectfully requests the Court to make and enter the following:

Conclusions of law

1. Plaintiff did not carry on or do business for any part of the fiscal years ending June 30, 1936, June 30, 1937, June 30, 1938, and June 30, 1939, within the meaning of the applicable revenue statutes imposing the capital stock tax.

2. The capital stock taxes paid by Plaintiff for those years were illegally and improperly collected by Defendant.

3. Plaintiff is entitled to judgment for the amount of capital stock taxes paid during those years, viz, $17,990.00, with interest from the respective dates of payment.

SEMMES, BOWEN & SEMMES,
Attorneys for Plaintiff.

Order

The above findings of fact and conclusions of law are this 1st day of November 1940, adopted by the Court, and Ordered filed, as its findings and conclusions.

WILLIAM C. COLEMAN,
U. S. District Judge.

203 In District Court of the United States for the District of Maryland

[Title omitted.]

Findings of fact and conclusions of law as submitted by defendant and order of court denying same

Filed October 9, 1940

Comes now the defendant by his attorney, Bernard J. Flynn, United States Attorney in and for the District of Maryland, and requests the Court to find the following:

Findings of fact

I

Plaintiff was incorporated under the laws of Maryland on September 30, 1935, with broad charter powers, permitting it to engage in any business lawful under the laws of the state of its incorporation.

II

During all of the taxable years here involved plaintiff bought and sold real and personal property; made numerous leases, collected rentals, paid interest, collected interest, paid officers' salaries, paid directors' fees, paid legal fees, paid engineers' fees, paid real estate commissions, bought stock of other corporations, owned and managed two subsidiary corporations, held stockholders and directors meetings, paid dividends, and otherwise engaged in business during all of said period.

III

Plaintiff at all times conducted a real estate business and was at all times active in such business.

204 Defendant respectfully requests the Honorable Court to make and enter the following:

Conclusions of law

1. That plaintiff did as a matter of law engage in and carry on a business enterprise during each of the fiscal years ended June 30, 1936 through June 30, 1939, within the meaning of the applicable revenue statutes.

2. Defendant is entitled to judgment on the evidence in the case.

BERNARD J. FLYNN,
United States Attorney.

Denied after hearing this 9th October 1940.

WILLIAM C. COLEMAN,
U. S. District Judge.

205 In District Court of the United States for the District of Maryland

[Title omitted.]

Notice of appeal

Filed Jan. 7, 1941

Notice is hereby given that the defendant in the above-entitled cause, M. Hampton Magruder, Collector of Internal Revenue, does hereby appeal to the United States Circuit Court of Appeals for the Fourth Circuit from the final judgment rendered in favor of the plaintiff and against the defendant, entered in this action on October 9, 1940.

BERNARD J. FLYNN,
United States Attorney.

206 In District Court of the United States for the District of Maryland

[Title omitted.]

Stipulation as to record on appeal under rule 75 (f) of rules of civil procedure

Filed Feb. 25, 1941

It is hereby stipulated between counsel for the parties hereto that the following parts of the record, proceedings, and evidence in the above cause be included in the transcript of record on appeal and transmitted by the Clerk of the District Court to the Appellate Court:

1. Complaint—Exhibits A to M (inclusive).
2. Answer.
3. Complete Transcript of Evidence.
4. Opinion of the Court.
5. Directions to Enter Judgment.
6. Plaintiff's Request for Findings of Fact and Conclusions of Law, Adopted by the Court November 1, 1940.

7. Defendant's Request for Findings of Fact and Conclusions of Law, Denied by the Court October 9, 1940.
8. Notice of Appeal.
9. Memorandum of Clerk.
10. Clerk's Certificate.

BERNARD J. FLYNN,
United States Attorney,
Attorney for Defendant (Appellant).
AMBLER H. MOSS,
SEMMES, BOWEN & SEMMES,
Attorneys for Plaintiff (Appellee).

207 *Memorandum of the Clerk*

1. Notice of Appeal filed by Defendant M. Hampton Magruder, Collector of Internal Revenue, etc., 7th January 1941. (Same day copy of notice mailed Ambler H. Moss, Esq., Attorney for Plaintiff.)

[Clerk's certificate to foregoing transcript omitted in printing.]

208 In United States Circuit Court of Appeals for the Fourth Circuit.

No. 4777

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, APPELLANT

v.

WASHINGTON, BALTIMORE, AND ANNAPOLIS REALTY CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Maryland, at Baltimore

Docket entries

March 1, 1941, the transcript of record is filed and the cause docketed.

Same day, the appearance of Bernard J. Flynn, United States Attorney, is entered for the appellant.

Same day, the appearance of Ambler H. Moss and David R. Owen is entered for the appellee.

Same day, petition for and order extending the time until March 1, 1941, for transmitting the record and docketing the appeal, are filed.

March 5, 1941, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key and James P. Garland, Special Assistants to the Attorney General, is entered for the appellant.

March 18, 1941, brief and appendix on behalf of the appellant are filed,

April 2, 1941, brief on behalf of the appellee is filed.

ARGUMENT OF CAUSE

April 23, 1941 (April term, 1941), cause came on to be heard before Soper, Dobie, and Northcott, Circuit Judges, and was argued by counsel and submitted.

209 In the United States Circuit Court of Appeals,
Fourth Circuit.

No. 4777

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, APPELLANT

v.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Maryland, at Baltimore

(Argued April 23, 1941. Decided June 10, 1941)

Before SOPER, DOBIE, and NORTHCUTT, Circuit Judges

James P. Garland, Special Assistant to the Attorney General, (Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Special Assistant to the Attorney General; Bernard J. Flynn, United States Attorney, and T. Barton Harrington, Assistant United States Attorney, on brief) for Appellant, and Ambler H. Moss and David R. Owen (Semmes, Bowen & Semmes on brief) for Appellee.

Opinion

Filed June 10, 1941

210 NORTHCUTT, Circuit Judge:

This is an action brought by the appellee, Washington, Baltimore and Annapolis Realty Corporation, herein referred to as the plaintiff, against the appellant, M. Hampton Magruder,

Collector of Internal Revenue, herein referred to as the defendant, in the District Court of the United States for the District of Maryland, at Baltimore.

The object of the action was to recover capital stock taxes, together with interest, alleged to have been erroneously assessed and collected from the plaintiff for the fiscal years 1936, 1937, 1938, and 1939, in the total sum of $17,990.

After a hearing the judge below made findings of fact and conclusions of law and in October 1940 rendered an opinion holding the plaintiff entitled to recover the amount claimed. Judgment was entered in favor of the plaintiff and the defendant brought this appeal.

The sole question to be considered is whether the plaintiff was "carrying on or doing business," during the years in question, within the meaning of the applicable Revenue Act.

The Revenue Act of 1935, Section 105 (a), c. 829, 49 Stat. 1014, reads as follows:

"Capital Stock Tax

"(a) For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.40 for each $1,000 of the adjusted declared value of its capital stock."

The pertinent Treasury Regulations are as follows:

"Treasury Regulations 64 (1936 Edition):

"Art. 41. Nature and Rate of Tax.—The tax is an ex-
211 cise tax imposed with respect to carrying on or doing business during a taxable year ending June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not on the business itself * * *"

"Art. 42. Doing Business.—The term 'business' is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

"The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit."

"Art. 43. Illustrations. (a) General.—In general 'doing business' includes any activities of a corporation whether it engages in—

"(1) buying, selling, manufacturing, developing, financing, speculating, or otherwise dealing in property of any description;

"(2) furnishing services of any character;

"(3) leasing or managing properties, collecting rents or royalties;

"(4) managing, financing, controlling or directing the operations, performing any function, or, in any other way, 212 aiding or serving the general purposes of any affiliated or related company;

"(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; * * *."

"Art. 43. (b) Exceptions.—Ordinarily the exceptions to 'doing business' are restricted to limited activities of a corporation, such as—

"(2) the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property."

The provisions of the Revenue Act of 1935 are not changed in the later acts, for the years in question, these later acts are: Revenue Act of 1936, Sec. 401 (a) (26 U. S. C. A., Internal Revenue Acts, p. 943); Revenue Act of 1938, Sec. 601 (a), (26 U. S. C. A., Internal Revenue Acts, p. 1139); and Internal Revenue Code, 1939, 26 U. S. C. A. Sec. 1200 (a).

There is no dispute as to the facts which were found by the judge below as follows: Plaintiff company was incorporated under the laws of Maryland in 1935, with broad charter powers, but was incorporated for the purpose of liquidating certain properties acquired from a Bondholders' Protective Committee, which had acquired the properties at a foreclosure sale of the Washington, Baltimore, and Annapolis Electric Railroad Company. These

properties consisted of certain rights-of-way, easements, and other properties located in Baltimore, Annapolis, and Washington, as well as at other points along the line of the railroad. The
213 properties acquired included all the capital stock of two subsidiary companies, which had been owned by the railroad while it was a going concern.

The bondholders had suffered a large loss and were endeavoring to dispose of the assets of the defunct railroad to the best advantage and the entire activities of the plaintiff company were directed to that end. There was no reinvestment of the money acquired from the sale of the properties and as fast as any money was received it was distributed to the bondholders (the stockholders of the plaintiff). Only such sums were retained as were necessary for current expenses. No reserve was maintained. In some instances leases were made of property but only for the ultimate purpose of a sale. In other words, the company was admittedly a purely liquidating corporation and was not endeavoring to operate for profit. Its activities were confined to the liquidation.

A case involving a similar question was before this Court in United States v. Atlantic Coast Line Company, 99 F. (2) 6, (opinion revised, U. S. v. Atlantic Coast Line Company, 99 F. (2) 932) certiorari denied, 306 U. S. 645. There we reviewed the authorities and held that "very slight activity constitutes 'doing business' when the end is profit." There does not necessarily have to be a profit made, the result of doing business may be a loss, but the end sought must be to make a profit. The decisions of the Supreme Court all seem to consider this element of profit to be essential to the laying of the tax.

Flint v. Stone Tracy Company, 220 U. S. 107.

Von Baumbach v. Sargent Land Company, 242 U. S. 503.

Edwards v. Chile Copper Company, 270 U. S. 452.

United States v. Emery, Bird, Thayer Realty Company, 237 U. S. 28.

Zonne v. Minneapolis Syndicate, 220 U. S. 187.

McCoach v. Minehill & S. H. R. Company, 228 U. S. 297.

214 In the latter case the Court said:

"* * * * The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business; in which event the investment income may be added to the business income in order to arrive at the measure of the tax; and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income, and dividing it

among its stockholders. In the former case the tax is payable; in the latter not."

The same holding as that made by the Supreme Court has been followed by the great majority of the subordinate federal courts.

It is contended on behalf of the defendant that, while a corporation originally organized to do business for profit engaged in liquidating its own asset might not be liable for the tax, yet the plaintiff, organized solely for the purpose of liquidating another corporation, is liable. We are of the opinion that this contention is not a valid one.

The judge below in his able opinion, holding the tax not collectible as against the plaintiff, distinguishes the instant case from the Atlantic Coast Line Company case, supra, and we are of the opinion that his reasoning is correct.

Here the end was not profit; there was no reinvestment of the money realized from the sale of properties, no financing of subsidiary companies and no building up of a large reserve. The plaintiff was solely a liquidating company and disbursed the money received to its stockholders as promptly as possible. The plaintiff was not "carrying on or doing business" within the plain meaning of the statute. The intention of Congress may not be arrived at by a mere surmise when the plain mean-
215 ing of ordinary words used in a statute can lead only to one conclusion as to that intent.

A Regulation may not extend the scope of an Act of Congress and we are of the opinion that Section (5); (a) of Article 43, Treasury Regulations 64, is not in accord with the proper interpretation of the Revenue Act. As was well said by the Judge below:

"Courts 'are not bound to accept the administrative construction of a statute regardless of consequences, even when disclosed in the form of rulings.' Estate of Sanford v. Commissioner, 308 U. S. 39, 52. The words of the statute here involved—'carrying on or doing business'—are not ambiguous or doubtful in the sense that permits the application, blindly, of the rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration, will generally not be disturbed (Brewster v. Gage, 280 U. S. 327, 336)."

The judgment of the court below was correct and it is accordingly affirmed.

Affirmed.

217 In United States Circuit Court of Appeals,
Fourth Circuit

No. 4777

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND, APPELLANT

vs.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Maryland

Judgment

Filed and Entered June 11, 1941

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Maryland, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be and the same is hereby, affirmed with costs.

June 11, 1941.

ELLIOTT NORTHCOTT,
U. S. Circuit Judge.

Recital as to issuance of mandate

On another day, to wit, July 12, 1941, the mandate of this Court, in this cause, is issued and transmitted to the District Court of the United States for the District of Maryland, at Baltimore, in due form.

218 In United States Circuit Court of Appeals,
Fourth Circuit

Order authorizing clerk to use original transcripts of records in making up records for use in the Supreme Court of the United States on applications for writs of certiorari

For reasons appearing to the Court, it is ordered that the Clerk of this Court, in making up certified transcripts of records for use in the Supreme Court of the United States on applications

for writs of certiorari to this Court, be, and he is hereby, authorized to use and incorporate therein the original transcripts of records filed in this Court. The said original transcripts of records shall be returned to this Court after the cases are finally disposed of in the said Supreme Court.

Further ordered that a copy of this order be incorporated in said certified transcripts of records.

January 9th, 1941.

JOHN J. PARKER,
Senior Circuit Judge.

219 [Clerk's certificate to foregoing transcript omitted in printing.]

220 In Supreme Court of the United States

Stipulation as to record on petition for writ of certiorari

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. Appendix to the brief of the appellant in the Circuit Court of Appeals for the Fourth Circuit.

2. The proceedings before the United States Circuit Court of Appeals for the Fourth Circuit.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit to file with the Clerk of the United States Supreme Court the entire transcript of the record now on file in his office and that in the event the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the court below and such portions of the entire transcript of the record certified by the Clerk of the Fourth Circuit as the respective parties may designate. It is further agreed that either party may refer in the petition and briefs to any portions of the typewritten transcript of record which is not included in the printed volumes filed with the Court.

CHARLES FAHY,
Acting Solicitor General of the United States.

Dated this 28th day of August 1941.

AMBLER H. MOSS,
Counsel for Respondent.

Dated this 2 day of September 1941.

221 Supreme Court of the United States

Order allowing certiorari

Filed October 27, 1941.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 45929. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 601. M. Hampton Magruder, Collector of Internal Revenue, Petitioner vs. Washington, Baltimore and Annapolis Realty Corporation. Petition for a writ of certiorari and exhibit thereto. Filed September 10, 1941. Term No. 601 O. T. 1941.

FILE COPY

SEP 10

No. 601

In the Supreme Court of the United States

OCTOBER TERM, 1941

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

WASHINGTON, BALTIMORE, AND ANNAPOLIS REALTY CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. —

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

WASHINGTON, BALTIMORE, AND ANNAPOLIS REALTY CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Acting Solicitor General, on behalf of M. Hampton Magruder, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit, entered in the above-entitled cause on June 10, 1941, affirming the decision of the District Court of the United States for the District of Maryland.

OPINIONS BELOW

The opinion of the District Court (R. 22–29) [1] is reported at 35 F. Supp. 340. The opinion of the

[1] The printed record in this case will consist of the appendix to the appellant's brief in the court below plus the proceedings in the court below. At the time of the writing of this petition the printed record has not yet been received from

United States Circuit Court of Appeals for the Fourth Circuit (R. 14–20) is reported in 120 F. (2d) 441.

JURISDICTION

The judgment below was entered on June 10, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer corporation was organized for the purpose of and engaged in liquidating the assets of another corporation. A capital-stock tax is imposed upon corporations with respect to "carrying on or doing business." Applicable Treasury Regulations provide that "doing business" includes such liquidation activities. The question presented is whether the regulations have so far departed from the statute as to be invalid.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1935, 49 Stat. 1014:

SEC. 105. CAPITAL-STOCK TAX.

(a) For each year ending June 30, beginning with the year ending June 30,

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the printer, and the record references herein, unless otherwise indicated, are to the manuscript record furnished to the printer.

[2] The provisions of the subsequent capital-stock tax statutes are, insofar as relevant, the same as Section 105, *supra*. Section 401 of the Revenue Act of 1936, 49 Stat. 1648; Section 1200 of the Internal Revenue Code (U. S. C., Supp. V, Title 26, 1200).

1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.40 for each $1,000 of the adjusted declared value of its capital stock. * * *

Treasury Regulations 64 (1936 Edition):[3]

ART. 41. *Nature and Rate of Tax.*—The tax is an excise tax imposed with respect to carrying on or doing business during a taxable year ending June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not on the business itself * * *.

ART. 42. *Doing Business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the

[3] Substantially to the same effect are the like-numbered provisions in the 1938 edition of Regulations 64.

business be continuous throughout the taxable year.

* * * * *

ART. 43. *Illustrations.*—(a) General.—In general "doing business" includes any activities of a corporation whether it engages in —

* * * * *

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; * * *

STATEMENT

This case involves capital stock taxes for the years ending June 30, 1936, through 1939.

The taxpayer corporation was organized under the laws of Maryland for the purpose of acquiring and liquidating certain real and personal property formerly owned by the Washington, Baltimore & Annapolis Electric Railroad Company. It was incorporated with broad charter powers, including the power to buy, sell, develop, and otherwise deal in land; to loan money, conduct a general brokerage business, deal in personal property, acquire other corporations, borrow money, issue bonds, buy stock, and carry on any general business authorized under the Maryland laws. Shortly after its incorporation, on September 30, 1935, taxpayer

received the properties from a bondholders' protective committee, which had acquired them at the foreclosure sale of the railroad company. In return the bondholders received one share of taxpayer's stock for each $1,000 railroad-bond which they held (R. 2, 5–6).

The properties transferred to taxpayer consisted of certain rights-of-way, easements, terminal properties, and other real estate located in Baltimore, Annapolis, and Washington, ~~and~~ as well as at other points along the line of the railroad. Included among the assets received was the entire stock of a realty holding company, which in turn owned another realty company, both of which were subsidiaries of the railroad company and performed no function other than that of holding legal title to some of its real estate (R. 6).

The activities of the taxpayer ever since its incorporation have consisted of owning the above properties and selling them from time to time, making rentals under short-term leases, paying taxes, insurance premiums, and other expenses, paying the salaries of its three officers, which were nominal except on one or two occasions when additional compensation in the nature of bonuses was paid in connection with extensive sales, and paying attorneys' fees and dividends. The minutes of taxpayer's board of directors (Original Transcript of Record, pp. 6–122) disclose continuous activity during the years in controversy involving numerous negotiations for the sale of various items of property and equipment as well as negotiations for

various short-term leases. From December 31, 1935, through December 31, 1939, liquidation of taxpayer's assets had been partially accomplished. During that period the amount of real estate carried on its balance sheet has been reduced from $419,250 to $122,007.61 (R. 6–7).

Taxpayer's source of income has been from the properties held by it for liquidation. Approximately four-fifths of such income has been realized from the sales of real estate, and the remainder from the rental of properties under short-term leases. The properties belonging to the subsidiary companies were also embraced in the taxpayer's liquidation activities, and the proceeds from their disposition were distributed to the parent company as dividends. All net receipts except for contingencies were distributed to stockholders. The total amount of the dividends paid equalled $75 per share of stock, and the book value as of December 31, 1939, was $20.68 per share (R. 6–7).

For the years ending June 30, 1936, through 1939 taxpayer has paid capital stock taxes of $7,000, $5,985, $3,000, and $3,005, respectively. It brought suit for refund in the District Court which decided in its favor and the Circuit Court of Appeals affirmed (R. 5, 22).

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding and deciding that taxpayer was not carrying on or doing business within the meaning of the applicable statutory provisions.

2. The Circuit Court of Appeals erred in failing to give effect to the applicable Treasury Regulations.

3. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The question whether specified corporate activities are sufficient to constitute "business" within the meaning of the capital stock tax provisions usually calls for the application of established principles to the facts under review, and generally does not warrant certiorari. See Government's brief in opposition in *Hercules Mining Co.* v. *United States*, No. 522, present Term. Here, however, there is involved much more than the application of the statute to a specific set of facts. This case involves the validity of a Treasury Regulation of long standing which has undertaken to implement the statute by spelling out certain *types* of activities as falling within the statute. Article 43 (a) of Regulations 64 (1936 Edition) provides as follows:

> ART. 43. *Illustrations.*—(a) General.—In general "doing business" includes any activities of a corporation whether it engaged in—
>
> * * * * *
>
> (5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and dis-

tributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; * * *

These provisions have appeared in substance in the various editions of the applicable regulations ever since the Revenue Act of 1918.[1]

The decision of the court below holding these regulations invalid at this late date raises an important question in the administration of the revenue laws that should be reviewed by this Court. The Bureau of Internal Revenue advises that the instant question is raised in about 100 cases pending in the Bureau. Moreover, it would be difficult to foretell how many claims for refund of taxes already paid will be filed on the basis of this decision or to determine how much revenue for future years will be put in jeopardy as a consequence of the ruling below.

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[1] The capital stock tax first appeared in the Revenue Act of 1916, 39 Stat. 756, Sec. 40, and the pertinent portions of the regulations have remained unchanged for about twenty-two years. Treasury Regulations 50, Article 18 (1919 Edition); Treasury Regulations 50, Article 11 (1920 Edition); Treasury Regulations 64, Article 12 (1922 Edition); Treasury Regulations 64, Article 12 (1924 Edition); Treasury Regulations 64, Article 22 (1933 Edition); Treasury Regulations 64, Article 33 (1934 Edition); Treasury Regulations 64, Article 43 (1936 Edition); Treasury Regulations 64, Article 43 (1938 Edition).

2. To the extent that it is possible to allege a conflict of decisions in cases of this type based upon the corporate activities themselves, we believe that the decision below is in conflict with *Edgar Estates Corp.* v. *United States*, 65 C. Cls. 415. In that case the corporation was organized for the purpose of acquiring and holding all the real and personal property devised and bequeathed to the residuary legatees under the will of a decedent. The company was to sell, mortgage, and otherwise dispose of the estate upon such terms as might seem proper to the board of directors, and to distribute the proceeds among the stockholders after payment of expenses. It was organized in 1917 and continued in existence until April 1933. During this period eight separate parcels of real estate were under its control. Repairs were made, rents collected, and the property was operated in such a way as to obtain for it the most advantageous price. When sales were made the cash received was immediately distributed to the stockholders. The corporation was under the exclusive management of one man, and its overhead expense was nominal. The court found that the company was engaged in doing business and said (p. 422)—

> The corporation came into existence, manifestly, because it enabled the stockholders * * * to conserve an estate of considerable proportions, curtail expenses, and provide for expeditious management and disposition in a way and by a method supe-

> rior to the established laws of the State respecting the administration of deceased persons' estates and the sale and division of realty owned by tenants in common.. * * * Rents were to be collected, some funds of the corporation were invested, and while the detail of activities resembles a process of liquidation, it is to be remembered that that is precisely the purpose of the incorporation, its one object to the discharge of which all business activities were solely directed. * * *

Factually, the only apparent distinction between the two cases is that in 1920 Edgar Estates Corporation bought three blocks of high-grade bonds (U. S. Victory Bonds and two industrials) at 97 or better, and sold them all within a year at a slight premium; it seems clear that there was no trading in securities for a speculative rise. Otherwise the activity of the company is actually greater in the case at bar.[5]

CONCLUSION

Therefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Acting Solicitor General.

SEPTEMBER 1941.

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[5] Cf. *Johnson's Estate* v. *United States*, 37 F. Supp. 617, 624 (C. Cls.), in which the court distinguished the *Edgar Estates Corporation* case.

U. S. GOVERNMENT PRINTING OFFICE: 1941

No. 601

In the Supreme Court of the United States

OCTOBER TERM, 1941

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

WASHINGTON, BALTIMORE, AND ANNAPOLIS REALTY CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 111–116) is reported at 35 F. Supp. 340. The opinion of the United States Circuit Court of Appeals for the Fourth Circuit (R. 123–127) is reported at 120 F. (2d) 441.

JURISDICTION

The judgment below was entered on June 11, 1941 (R. 128). The petition for a writ of certiorari was filed September 10, 1941, and was granted October 27, 1941. The jurisdiction of this Court

is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The taxpayer corporation was organized for the purpose of and engaged in liquidating the assets of another corporation. The capital stock tax is imposed upon corporations "carrying on or doing business" within the tax year. The applicable Treasury Regulations have provided since 1919 that doing business includes such liquidation activities. The questions presented are whether the regulations have so far departed from the statute as to be invalid, and, whether, in any event, the taxpayer's activities are within the statute irrespective of the regulations.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the applicable statutes and regulations are set forth in the Appendix, *infra*, pp. 27—38.

STATEMENT

This case involves capital stock taxes for the years ending June 30, 1936, through 1939. The respondent corporation was organized September 30, 1935, under the laws of Maryland relating to business corporations, by the protective committee for the bondholders of the Washington, Baltimore & Annapolis Electric Railway Company (R. 117–118). The committee had acquired through fore-

closure certain properties belonging to the railroad company, and the respondent corporation was organized in order to permit the liquidation of these properties in an orderly manner (R. 117–118). Its charter gave respondent broad powers, including the power to buy, sell, lease, develop and otherwise deal in land, loan and borrow money, conduct a general brokerage business, deal in personal property, and carry on any business incidental to its activities (R. 5–6). The stock of the corporation was distributed to the former bondholders on the basis of one share for each $1,000 bond held (R. 117–118).

The properties acquired by the taxpayer consisted of certain rights-of-way, easements, terminal properties and other real estate located in Baltimore, Annapolis and Washington, as well as at other points along the line of the railroad. Included among the assets received was the entire stock of a realty holding company which, in turn, owned another realty company, both of which had been subsidiaries of the railroad and performed no function other than that of holding legal title to real estate (R. 118).

Since its incorporation respondent has been engaged in carrying on negotiations for the sale of the properties acquired, selling them from time to time as satisfactory offers were received, and renting unsold properties under short term leases in "an attempt to earn the carrying charges * * *

pending their ultimate sale."[1] (R. 118). Respondent has repaired the property, and paid taxes, insurance premiums and other expenses (R. 79–82). Respondent has been managed by its three officers and directors, who received nominal salaries except on one occasion when a substantial bonus was paid them (R. 99, 82), and its attorney (R. 17–76). Its only other employee was a part-time auditor (R. 118, 72).

The minutes of the respondent's directors' meetings (R. 17–76) disclose continuous activity during the years in controversy, involving numerous negotiations for the sale of various items of property and equipment and for the leasing of unsold property. They show, in addition, that in 1936 respondent purchased certain equipment from the Boston Iron and Metal Company in order to resell it to the Pennsylvania Railroad (R. 19–20, 104–105).[2]

The value of the properties received by respondent in 1935, as shown by respondent's balance sheet, was $410,250 (R. 77). During the next four years portions of this property were sold for approximately $675,000, some being sold each year (R. 80–82). At the end of this period respondent's books still showed property worth $122,000 (R. 79).

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[1] Resp. Brief in Circuit Court of Appeals, p. 18.

[2] The tracks and transmission lines on a part of respondent's roadbed sold to the Pennsylvania Railroad had previously been sold by respondent to the Boston Iron and Metal Company. It was necessary for respondent to buy these properties back in order to get the Pennsylvania to purchase that portion of its right-of-way (R. 104–105).

During the four-year period respondent received in rentals $136,000 (R. 80–82). Respondent's annual statements show that large disbursements were made for taxes, that commissions paid on sales and rentals amounted to approximately $24,000, that expenditures for repairs were over $3,400, for insurance $8,800, for engineering expenses $23,000, for legal fees $30,000, for auditing and stenographic services $3,000, and for special compensation to directors and Secretary, $12,500 (R. 80–82).

All net income, except reserves for contingencies, was distributed to the stockholders as received. The total amount paid them by December 31, 1939, was $75 per share. With prior distributions, this gave each bondholder of the railroad company $176 on his $1,000 bond [3] (R. 107–109, 118). By that time the book value per share of respondent's stock was $20.68 (R. 118).

For the years ending June 30, 1936, through June 30, 1939, respondent paid capital stock taxes of $6,000, $5,985, $3,000 and $3,005, respectively (R. 119). It brought suit for refund in the District Court. That court held that because respondent was a liquidating corporation, it was not carrying on or doing business and was therefore exempt from the tax (R. 113–119). The Circuit Court of Appeals affirmed (R. 123–127).

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[3] The 8 percent of the bondholders who had not deposited their bonds with the protective committee had previously been paid $175 (R. 107–108).

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding and deciding that the taxpayer was not carrying on or doing business within the meaning of the applicable statutory provisions.

2. The Circuit Court of Appeals erred in failing to give effect to the applicable Treasury Regulations.

3. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

Respondent concedes that its conduct constitutes doing business under a specific provision of the Treasury Regulations, but contends that the regulation is invalid. The regulation, which has been in effect since 1918, is a reasonable and permissible construction of a statute the meaning of which has been recognized by other circuit courts of appeals to be not at all clear.

Even apart from the regulations, respondent's conduct would constitute doing business. Selling, renting, and managing real property has frequently been held to be doing business within the meaning of the Act, even when the amount of such activity has been slight. Respondent does not merely own property and engage in conduct incidental to the distribution of the avails.

The fact that respondent was created as a liquidating corporation does not mean that it is not doing business. Even though an ordinary business

corporation, which has abandoned its primary enterprise and is disposing of its assets, might not be regarded as engaged in business, liquidation is the business of respondent. Since respondent was engaged in activity ordinarily carried on for profit, it is immaterial whether or not respondent was seeking profit. In fact, however, respondent was not only seeking but actually made a substantial profit in selling the property entrusted to it. The prior losses of the Electric Railroad Company and its bondholders are not attributable to respondent, an entirely separate entity.

ARGUMENT

THE CORPORATION WAS DOING BUSINESS IN THE YEARS INVOLVED AND IS SUBJECT TO THE CAPITAL STOCK TAX

A. THE REGULATIONS

This case involves the question whether a corporation organized to acquire and liquidate the assets of another corporation and engaged in disposing of those of the assets for which a satisfactory price can be obtained, meanwhile leasing the balance, is "carrying on or doing business" within the meaning of the capital stock tax[4] (I. R. C., Sec.

[4] The question under the capital stock tax is not to be confused with the question whether an individual is engaged in carrying on a trade or business so as to be entitled to a deduction under provisions like Section 23 (a) of the Revenue Act of 1934, which authorize the deduction from gross income of "the ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business

1200).[5] The tax in question, or its predecessors, have been in effect since 1916,[6] except for a hiatus between 1926 and 1933. Treasury Regulations 38, issued under the 1916 Act, declared that (Article 5):

> * * * A corporation formed to take over miscellaneous stocks, bonds, and other property, to negotiate the sale of the various items from time to time as opportunity and judgment dictate, and to distribute the proceeds from time to time as liquidation is effected, is organized for profit and while engaged in such liquidation is carrying on business.

This provision of the applicable regulations, with inconsequential changes of wording, remained

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* * *." This Court has expressly recognized that difference tests are to be applied in giving effect to such provisions. *Higgins* v. *Commissioner*, 312 U. S. 212, 217; *United States* v. *Pyne*, 313 U. S. 127, 131.

[5] This case involves taxes for the fiscal years ending June 30, 1936, through June 30, 1939, and thus arises under the Revenue Act of 1935, Sec. 105 (c. 829, 49 Stat. 1014), Revenue Act of 1936, Sec. 401 (c. 690, 49 Stat. 1648), and Revenue Act of 1938, Sec. 601 (c. 289, 52 Stat. 447). These statutory provisions are identical, and will be referred to for convenience as now set forth in I. R. C., Sec. 1200.

[6] Revenue Act of 1916, Sec. 407 (c. 463, 39 Stat. 756), Revenue Act of 1918, Sec. 1900 (c. 18, 40 Stat. 1057), Revenue Act of 1921, Sec. 1000 (c. 136, 42 Stat. 227), Revenue Act of 1924, Sec. 700 (c. 234, 43 Stat. 253), National Industrial Recovery Act, Sec. 215 (c. 90, 48 Stat. 207), Revenue Act of 1934, Sec. 701 (c. 277, 48 Stat. 680) and Acts cited in preceding footnote. Differences between the 1916 Act and its successors are noted below, *infra*, p. 24.

in effect through the 1934 edition[7] of the regulations. In 1936 the regulations were reorganized, but not so as to change the substance of the provision quoted above. Since 1936[8] Article 43 of Regulations 64 has provided:

> ART. 43. *Illustrations.*—(*a*) *General.*—In general "doing business" includes any activities of a corporation whether it engages in—
>
> * * * * * *
>
> (5) The orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;
>
> * * *

That the latter regulation applies to the taxpayer has been conceded by respondent and the lower courts. If the regulation is valid, respondent is not entitled to prevail.

Respondent and the courts below have found the regulation to be invalid because in conflict with the "plain meaning of the statute" (R. 127, Br. in Opp., p. 5).

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[7] Treasury Regulations 50 (1919 ed.), Art. 18; (1920 ed.), Art. 11; Treasury Regulations 64 (1922 ed.), Art. 12; (1924 ed.), Art. 12; (1933 ed.) Art. 22; (1934 ed.), Art. 33.

[8] Treasury Regulations 64 (1936 ed.), Art. 43; (1938 ed.), Art. 43.

It is, of course, true that, as applied to most corporations, the meaning of the phrase "carrying on or doing business" is perfectly clear. But as other circuit courts of appeals have recognized in dealing with similar problems, in close cases "the criterion is none too sharply defined" (*American Investment Securities Co.* v. *United States*, 112 F. (2d) 231, 232 (C. C. A. 1)). Decision in "perplexing" cases "on the borderline" has been said to be determined "very much according to the mental view point of the judge rather than decision controlled by some definite principles" (*Harmar Coal Co.* v. *Heiner*, 34 F. (2d) 725, 727 (C. C. A. 3), certiorari denied, 280 U. S. 610). And in *Argonaut Consolidated Mining Co.* v. *Anderson*, 52 F. (2) 55 (C. C. A. 2), certiorari denied, 284 U. S. 682, Circuit Judge Learned Hand declared that "the decisions in the lower courts represent so many variants that it is scarcely possible to consider them; as in so many other matters we have to mark off a zone of increasing impenetrability rather than to draw a line."*

Such an opaque and undefined field was a "peculiarly appropriate" one for administrative interpretation (*Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 102). Here, as in statutes using such expres-

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*The same court and the Circuit Court of Appeals for the Ninth Circuit have also made reference to the "decisions on this tangled subject." *Eaton* v. *Phoenix Securities Co.*, 22 F. (2d) 497 (C. C. A. 2); *United States* v. *Hotchkiss Redwood Co.*, 25 F. (2d) 958 (C. C. A. 9).

sions as "net income * * * from the property",[10] or "ordinary and necessary",[11] "the Congress has not prescribed a precise formula free from all ambiguity" (*ibid.*), or used terms "so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation" (*Textile Mills Securities Corp.* v. *Commissioner*, No. 34, this Term, pamph. p. 9). As was true in the *Textile Mills* case, the numerous cases and the fine distinctions drawn by the lower courts on this subject "bear witness" to the need for administrative implementation (*ibid.*).

Here the regulation in question has been in effect ever since 1918,[12] covering a period in which the statute has been reenacted seven times. The regulation thus represent a contemporaneous and long-continued administrative interpretation of the statute, and, accordingly, is entitled to great weight. *Brewster* v. *Gage*, 280 U. S. 327; *Fawcus Machine Co.* v. *United States*, 282 U. S. 375; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488; *United States* v. *Shreveport Grain & El. Co.*, 287 U. S. 77; *Textile Mills Securities Corp.* v. *Commissioner*, No. 34, this Term.[13]

[10] Revenue Act of 1928, Sec. 114 (b) (3), 45 Stat. 791, 821; *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 102.

[11] Revenue Act of 1928, Sec. 23 (a), 45 Stat. 791, 799; *Textile Mills Securities Corp.* v. *Commissioner*, No. 34 this Term

[12] Except for the period during which the tax itself was not in existence.

[13] It has frequently been held that the successive reenactments of a statute while a regulation is in effect lend even

B. APART FROM THE REGULATIONS, RESPONDENT'S ACTIVITIES CONSTITUTE "DOING BUSINESS"

We submit that not only is the regulation here a permissible and reasonable interpretation of the law, and obviously not in conflict with it, but that the same conclusion would follow if there were no regulation at all.[14] The following considerations will support both of these propositions:

During the tax years respondent was engaged in selling, renting, and managing real property. Such activities, apart from the liquidation aspects of the case, to be discussed below (*infra*, pp. 16–26) are unquestionably "doing business" within the meaning of the law. Since the first decisions under the 1909 tax on the incomes of corporations "carrying on or doing business", it has been recognized that companies engaged in selling, leasing, and managing real estate are taxable. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 169–171;[15] *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503; *Page* v. *M.*

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greater weight to its validity. Cf. *Morgan* v. *Commissioner*, 309 U. S. 78, 81; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Old Mission Co.* v. *Helvering*, 293 U. S. 289, 293–294.

[14] The lower courts' decisions in this case turned upon an interpretation of the law as not applicable to liquidating corporations, and accordingly are not binding upon this Court as findings of fact. Cf. *Powers* v. *Commissioner*, 312 U. S. 259; *United States* v. *Pyne*, 313 U. S. 127; *Helvering* v. *Tex-Penn Co.*, 300 U. S. 481; *Bogardus* v. *Commissioner*, 302 U. S. 34.

[15] A number of the parties to the group of cases passed upon in the opinion in *Flint* v. *Stone Tracy Co.* were real estate corporations.

Rich & Bros. Co., 99 F. (2d) 607 (C. C. A. 5), certiorari denied, 306 U. S. 662; *Harmar Coal Co.* v. *Heiner*, 34 F. (2d) 725, 727 (C. C. A. 3), certiorari denied, 280 U. S. 610; *United States* v. *Peabody Co.*, 104 F. (2d) 267 (C. C. A. 6).

Furthermore, it has been frequently declared that the statute "requires no particular amount of business in order to bring a company within its terms." *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. at 517; *Page* v. *M. Rich & Bros. Co.*, 99 F. (2d), at 610; *Argonaut Consolidated Mining Co.* v. *Anderson*, 52 F. (2d) 55 (C. C. A. 2), certiorari denied, 284 U. S. 682; *American Investment Securities Co.* v. *United States*, 112 F. (2d) 231 (C. C. A. 1); cf. *Edwards* v. *Chile Copper Co.*, 270 U. S. 452. In the cases cited the quantity of business carried on by the corporations involved was not substantial, and was fairly comparable to the activities of respondent here. Thus, in the *Von Baumbach* case the corporation had leased its mineral lands, received the rentals, employed another company to inspect the properties for it, and sold and rented certain minor portions of its other real estate.

The present case is not governed by the authorities and the Regulation (Article 43 (b) (2))[16] holding the tax inapplicable to corporations engaged in the mere ownership and holding of property and the distribution of the avails. Under

[16] See Appendix, *infra*, p. 29.

these authorities a corporation owning or leasing property and doing nothing but distributing the proceeds therefrom to its stockholders is not regarded as engaged in business. *Zonne* v. *Minneapolis Syndicate*, 220 U. S. 187; *McCoach* v. *Minehill & S. H. R. Co.*, 228 U. S. 295; *United States* v. *Emery*, 237 U. S. 28.[17] The *McCoach* case, in which a divided court apparently extended this doctrine to such acts necessary to the maintenance of the property as the investment and reinvestment of the rentals, seems to have been limited to its facts by subsequent decisions. Cf. *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503; *Edwards* v. *Chile Copper Co.*, 270 U. S. 452; *Argonaut Consolidated Mining Co.* v. *Anderson*, 42 F. (2d) 219, 221 (District Judge Patterson), affirmed 52 F. (2d) 55 (C. C. A. 2), certiorari denied, 284 U. S. 682; *Page* v. *M. Rich & Bros. Co.*, 99 F. (2d) 607 (C. C. A. 5), certiorari denied, 306 U. S. 662; *United States* v. *Peabody Co.*, 104 F. (2d) 267 (C. C. A. 6); *United States* v. *Hercules Mining Co.*, 119 F. (2d) 288 (C. C. A. 9), certiorari denied, No. 522, this Term; *United States* v. *Hotchkiss Redwood Co.*, 25 F. (2d) 958, 959 (C. C. A. 9). In any event the activity of respondent here in selling, renting, and managing real property goes considerably further than the mere receipt and investment of the proceeds involved in the *McCoach* case.

[17] The cases cited arose under the 1909 Act referred to *infra*, p. 24.

Subsequent decisions have required very little activity in addition to the holding of property and distribution of the proceeds to bring a corporation within the tax. The test which these cases establish has been summarized by Judge Learned Hand in the *Argonaut* case as follows (52 F. (2d), at 56):

> Just what activities bring a corporation within the statutory definition the decisions, as is almost inevitable, do not certainly declare. That there is a degree of quietude which will exempt it, is indeed well settled [*Zonnie* v. *Minneapolis Syndicate*, 220 U. S. 187, 31 S. Ct. 361, 55 L. Ed. 428; *McCoach* v. *Minehill, etc., Co.*, 228 U.S. 295, 33 S. Ct. 419, 57 L. Ed. 842; *U. S.* v. *Emery, etc., Co.*, 237 U.S. 28, 35 S. Ct. 499, 59 L. Ed. 825; *Eaton* v. *Phoenix Securities Co.*, 22 F. (2d) 497 (C.C.A. 2); *Rose* v. *Nunnally Co.*, 22 F. (2d) 102 (C.C.A. 3)]; but how far it may be active and still maintain its exemption, is in the nature of things impossible of statement in general terms. In most of those cases in which the corporation has succeeded its activities have been confined to holding the title of property, whose usufruct it receives and distributes in dividends. When this is the whole scope of its dealings, it does no business within the meaning of the statute.
>
> However, it takes little to bring it from behind this shield. Thus, selling and leasing land, and exploring for ore, were enough in *van Baumbach* v. *Sargent Land Co.*, 242 U.S.

503, 37 S. Ct. 201, 61 L. Ed. 460; and borrowing money to assist the subsidiary in *Edwards* v. *Chile Copper Co.*, 270 U.S. 452, 46 S. Ct. 345, 70 L. Ed. 678. On the other side the investment of its funds in current securities from which income is derived was not enough in *McCoach* v. *Minehill, etc., Co.*, 228 U.S. 295, 33 S. Ct. 419, 57 L. Ed. 842.

The test to be applied is, whether a corporation is (*id.*, at 57) "outside the class of those inert companies, which can assert that they are mere dry holders of property, and conduits to carry over its profit to the persons eventually entitled." See also *American Investment Securities Co.* v. *United States*, 112 F. (2d), at 233.

The activities and expenditures of respondent as outlined in the Statement (pp. 3–6, *supra*) clearly show that it does not come within the class of "inert or dry holders of property" which are exempt from the law.

C. THE FACT THAT RESPONDENT WAS A LIQUIDATING CORPORATION DOES NOT MEAN THAT IT WAS NOT DOING BUSINESS

The court below, although conceding that very slight activity would constitute doing business under the statute when the end is profit, held that because the respondent's object was liquidation of the assets entrusted to it, rather than profit, it was not doing business (R. 126–127).

1. *The argument as to liquidation.*—The fact that a corporation's activities consist of liquida-

tion of assets does not mean that it is not engaged in business. In a sense every mining or other wasting asset corporation is engaged in the liquidation of its assets.[18] The question, we submit, is not whether a corporation intends to continue doing business after the property presently owned is disposed of, but whether it *is* doing business at the time it is disposing of the property. The nature of the activities during the taxable period, not the intention as to what the company will or will not do in the future, must be controlling.

It is true that cases in the lower courts have regarded the fact that a corporation was in liquidation as of some consequence. It has been held that if a corporation formed for the purpose of carrying on some ordinary business activity abandons this primary enterprise and engages solely in the liquidation of its assets, it is no longer doing business. *Union Land & Timber Co.* v. *United States*, 65 C. Cls. 129; *Johnson's Estate* v. *United States*, 37 F. Supp. 617 (C. Cls.); *S. Makransky & Sons, Inc.* v. *United States* (E. D. Pa.), October 14, 1940, 1940 C. C. H. Fed. Tax Service, Vol. 4, Par. 9713. Whether or not this should be the rule when the activities of a corporation in

[18] The taxability of a wasting asset corporation is clear, Cf. *Harmar Coal Co.* v. *Heiner*, 34 F. (2d) 725 (C. C. A. 3), certiorari denied 280 U. S. 610; *United States* v. *Hercules Mining Co.*, 119 F. (2d) 288 (C. C. A. 9), certiorari denied No. 522, this Term; *Lyon Lumber Co.* v. *Harrison*, 113 F. (2d) 443 (C. C. A. 7).

liquidation would otherwise constitute carrying on business, they have no application to a company formed with the express object of facilitating the liquidation of property previously belonging to the stockholders. It might be said in a colloquial sense that a railroad which ceased to operate and which was engaged solely in disposing of its real property was no longer engaged in business. But a corporation such as respondent, established specially for the purpose of disposing of such property, would be doing the very thing for which it was created. Liquidation is the business of such a corporation."[19]

The only cases directly in point hold that a corporation formed for the purpose of liquidating property is subject to the tax so long as it is engaged in the sale, renting and management of the property entrusted to it. *Edgar Estates Corporation* v. *United States*, 65 C. Cls. 415; *Conhaim Holding Co.* v. *Willcuts*, 21 F. (2d) 91 (D. Minn.).[20] The corporation involved in the *Edgar* case was organized for the express purpose of acquiring the corpus of an estate and liquidating it in an orderly manner, renting such property as could not be imme-

[19] The fact that a company is established under a state business corporation law (R. 6, 117), though not at all conclusive, is some indication that it is engaged in business when it is doing precisely that for which it was created.

[20] *Clallam Lumber Co.* v. *United States*, 34 F. (2d) 944, 947, 37 F. Supp. 542 (W. D. Mich.), although distinguishable on its facts, seems to take a contrary view, and was, we believe, erroneously decided.

diately sold at a favorable price, and in general operating precisely as did the taxpayer. The reasoning of the opinion of the Court of Claims is directly in point here (pp. 422–423):

> * * * The plaintiff in this case was prompted to incorporate in view of a situation wherein incorporation offered, at least in the opinion of the stockholders, a distinct advantage and profit over the ordinary course of law applicable to their situation. * * * *while the detail of activities resembles a process of liquidation, it is to be remembered that that is precisely the purpose of the incorporation, its one object to the discharge of which all business activities were solely directed.* * * * The fact that overhead expense was nominal, proven profits from investments small, and business activities not especially exacting in nowise militates against the rule. If the corporation was pursuing the object for which it was organized and doing all the essential things to accomplish that object, it cannot claim a classification of an inactive corporation, doing no more than liquidating its assets. It is not the amount of business done which signifies, although in this case it is apparent that the corporation did conserve and save to the estate expenses which otherwise it would have incurred, and likewise enabled the stockholders to await a propitious moment for sales of real estate, as well as enable

> the corporation to collect rents, maintain the property, and make small investments. * * * * [Italics supplied.]

Cases which respondent claims to be inconsistent with the above doctrine fall into two categories. They involve either the class described above (p. 17), of corporations winding up their own previously active operations in another field and not formed for liquidation purposes, or corporations which were formed with the object of disposing of property but which the Court regarded as not actively engaged in the disposal of the property during the taxable period. *Cannon* v. *Elk Creek Lumber Co.*, 8 F. (2d) 996 (C. C. A. 7); *Sears* v. *Hassett*, 111 F. (2d) 961 (C. C. A. 1) [21]; cf. *United States* v. *Hotchkiss Redwood Co.*, 25 F. (2d) 958 (C. C. A. 9); *Lane Timber Co.* v. *Hynson*, 4 F. (2d) 666 (C. C. A. 5).[22] A liquidating corporation, just as any other "inert" corporation, might not be doing business when engaged solely in owning and maintaining its property [23] (see p. 16,

[21] With respect to the *Cannon* and *Sears* cases respondent's brief in the Circuit Court of Appeals (p. 20) stated that the corporations, "though formed to liquidate, and having done so for a time, during the taxable year, were merely holding the balance of their assets pending an ultimate sale."

[22] The two cases last cited involved corporations formed for the purpose of holding land for a profitable sale, not liquidation, but which in fact "never did more than passively hold it". (Respondent's brief in the Circuit Court of Appeals, p. 14).

[23] A corporation organized for the purpose of liquidation might be carrying on business even though its activities

supra.) The cases cited merely show that the eagerness of such corporations, like other owners of property, to sell if an adequate price is received does not bring them within the statute during a period in which no sales are made or property rented.

2. *The argument that petitioner was not organized for profit.*—The court below held that respondent was not doing business because it was not organized for profit. This ruling is incorrect both on the facts and as a matter of law.

(a) Here the taxpayer was plainly trying to make as much money as possible out of the disposal of its assets. Its balance sheet on December 31, 1935, before the sale of any of the property acquired from the bondholders, showed real estate worth $119,250. The statements of receipts and disbursements and balance sheets for the years 1935 through 1939 (R. 77-82) show sales of real estate totaling about $675,000 and property still held on December 31, 1939, valued at $122,000. This in itself would show a gain or profit of almost $375,000 or about 90 percent on the original assets. In addition respondent had received rents exceeding $130,000 (*ibid*). The results were so satisfactory to the stockholders that substantial bonuses were paid the directors and officers of the company (R. 82, 99). In such circumstances it is

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would be less than sufficient to bring within the statute a corporation created for other purposes.

absurd to say that respondent was not organized for profit, or that during the taxable year it did not in fact make a profit.

The court below, in reaching the contrary conclusion, seems to have confused respondent corporation with its stockholders, the bondholders of the defunct railroad company. It is, of course, true that the losses of the railroad were much greater than anything the bondholders might recover through the activities of respondent, and that these bondholders, who were respondent's stockholders, would lose heavily, irrespective of what respondent might do.[24] But the inability of the bondholders to recover their full investment in the railroad is not attributable to respondent, and does not mean that respondent was not operating profitably. Any determination as to whether respondent was making profits must be based upon the value of the property with which it began business, without regard for the losses previously incurred by the railroad.

The railroad corporation, its bondholders, and respondent are all separate and distinct entities, and must be so treated when it comes to paying taxes as well as when separation is beneficial to them. As this Court recently stated, "The choice of disregarding a deliberately chosen arrangement

---

[24] The record indicates that by the end of the taxable period each bondholder had received $176 on each thousand-dollar bond (R. 107-108).

for conducting business affairs does not lie with the creator of the plan." *Gray* v. *Powell*, No. 18, this Term, pamph. p. 9; see also *Higgins* v. *Smith*, 308 U. S. 473, 477; *Edwards* v. *Chile Copper Co.*, 270 U. S. 452, 456.

(b) In any event, we submit, a corporation may be engaged in business even if it is not concerned with gains or profits. Article 42 of Regulations 64 has, since 1936, provided that:

> ART. 42. *Doing business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. *Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business.* It is immaterial whether the activities result in a profit or loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year. [Italics supplied.]

This interpretation of "doing business" as applied to corporations engaged "in activities

ordinarily carried on for profit" is entirely reasonable. For example, a corporation operating a professional baseball team might be owned and controlled by an individual motivated entirely by his interest in the sport and not at all concerned with whether the company was operating at a profit or a loss. The company would nevertheless be carrying on or doing business.

The corporation tax of 1909 [25] and the first capital stock tax of 1916 [26] on corporations carrying on or doing business applied in terms to corporations "organized for profit." In the *Von Baumbach* case this Court seems to have assumed (242 U. S., at 514) that corporations were organized for profit unless they came "within the exceptional character of charitable or eleemosynary organizations excepted from the operation of the act".[27] This conception of the meaning of the words "organized for profit" would appear to have made the phrase

[25] Act of August 5, 1909, Sec. 38, c. 6, 36 Stat. 11, 112.

[26] Revenue Act of 1916, Sec. 407, c. 463, 39 Stat. 756.

[27] The District Court in the *Von Baumbach* case, whose decision was affirmed by this Court on the point, declared (207 Fed. 423, at 428): "* * * my present opinion is that the words 'organized for profit' are used to distinguish these corporations from charitable corporations; that any corporation organized by private persons for their own advantage and interest, and not for social, charitable, or beneficent purposes, is organized for profit; and that a company organized as these companies were, to acquire title to an estate for the purpose of liquidating it and dividing the proceeds among the owners, is organized for 'profit,' as that term is used in the act in question. * * *"

superfluous, in view of the exemption for charitable corporations contained in all of the corporation tax statutes since 1909.[28]

That such may have been the opinion of Congress appears from the fact that in the first reenactment[29] of the capital stock tax after the *Von Baumbach* decision the phrase "organized for profit" was deleted;[30] it has not reappeared in any of the subsequent Acts. This elimination of language identical with that which the court below has read back into the statute is not without significance. This Court has treated the omission of another restrictive phrase found in the 1909 and 1916 acts from the same section of the 1919 act as plainly manifesting a legislative intention that the scope of the tax was to be extended. *Hecht* v. *Malley*, 265 U. S. 144, 155.

There would, of course, have been no need for the exemption for charities if corporations doing business included only those organized for profit. We submit that the elimination of the requirement that the corporation be organized for profit, together with the retention of the exemption for charitable organizations, indicates that a non-charitable corporation may be doing business

[28] Act of August 5, 1909, Sec. 38, c. 6, 36 Stat. 11, 112, and revenue acts cited in Notes 5 and 6, *supra*, p. 8.

[29] Revenue Act of 1918, Sec. 1000, c. 18, 40 Stat. 1057.

[30] Our examination of the legislative history of this Act has not revealed any reference to or explanation of the elimination of the words "organized for profit."

within the meaning of the Act irrespective of the profit motive. Thus the legislative history supports the conclusion in Article 42 of the Regulations that engaging in activities *ordinarily* carried on for profit is doing business.

CONCLUSION

It is, therefore, respectively submitted that the decision of the court below is erroneous and should be reversed.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
J. LOUIS MONARCH,
HUBERT L. WILL,
ROBERT L. STERN,
Special Assistants to the Attorney General.

FEBRUARY 1942.

APPENDIX

Internal Revenue Code, Sections 1200 (a) and 1201 (a) (1), which sections contain provisions found in the Revenue Act of 1935, Sec. 105, 49 Stat. 1017; Revenue Act of 1936, Section 401, 49 Stat. 1733; and Revenue Act of 1938, Sec. 601, 52 Stat 565, read as follows:

§ 1200. Tax—(a) *Domestic corporations.*

For each year ending June 30, beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.

* * * * *

§ 1201. *Exemptions.*

(a) The taxes imposed by section 1200 shall not apply—

(1) *Corporations exempt from income tax.*

To any corporation enumerated in section 101;

* * * * *

Internal Revenue Code, Section 101, referred to in Section 1201 (a) (1), reads in part as follows:

§ 101. *Exemptions from tax on corporations.*

The following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to

children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * * * * *

Treasury Regulations 64 (1936 Edition):

ART. 42. *Doing business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

ART. 43. *Illustrations.*—(a) *General.*—In general "doing business" includes any activities of a corporation whether it engages in—

(1) buying, selling, manufacturing, developing, financing, speculating or otherwise dealing in property of any description;

(2) furnishing services of any character;

(3) leasing or managing properties, collecting rents or royalties;

(4) managing, financing, controlling or directing the operations, performing any function, or, in any other way, aiding or serving the general purposes of any affiliated or related company;

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; or

(6) any other activities coming within the ordinary and natural signification of the term "carrying on or doing business."

(b) *Exceptions.*—Ordinarily the exceptions to "doing business" are restricted to limited activities of a corporation, such as—

(1) the issuance and sale of its stock for cash as a preliminary step in the completion of its organization; or

(2) the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property.

Nor will a corporation be regarded as "doing business" if it has *no* activities, because it has—

(3) become dormant; or

(4) completed its business, as, for example, a real estate subdivision developed, sold and reduced to cash; or

(5) abandoned its business, as, for example, where prospective oil properties are proven worthless.

If the corporation's activities are not so limited as outlined in the preceding paragraph, it will be regarded as "doing business" within the meaning of the Act. Thus, a corporation is "doing business" if—

(A) in addition to the activities described in paragraph (b) (1) it engages in any other activity such as the making of contracts, the buying of materials or machinery, the construction of buildings, or the employing or discharging of individuals; or

(B) in addition to the activities described in paragraph (b) (2) it engages in any other activity, such as (i) in the case of a company holding securities, the investment or reinvestment of surplus or other funds in excess of an amount necessary to maintain its original investments, or (ii) in the case of a company which had leased its property to another, the maintaining or keeping the property in repair in accordance with the terms of the lease, or in other activities necessary to enable the lessee properly to manage the leased property, regardless of whether such activities are performed on behalf and under the order of the lessee or that such acts are not of major importance; or

(C) although it retires from its principal business it nevertheless engages in other business activities or maintains its organization for the purpose of continued effort in the pursuit of profit or gain.

U. S. GOVERNMENT PRINTING OFFICE: 1942

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 601.

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE,

Petitioner,

vs.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION.

RICHARD F. CLEVELAND,
AMBLER H. MOSS,
Counsel for the Respondent.

The Daily Record Co. Print, Baltimore.

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OPINIONS BELOW.

The opinion of the District Court (R. 5-11) is reported at 35 F. Supp. 340. The opinion of the Circuit Court of Appeals (R. 12-16) affirming the decision of the District Court, is reported in 120 F. (2d) 441.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on June 10, 1941. The petition for writ of certiorari was filed on September 10, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

Whether the taxpayer, a liquidating corporation, was "carrying on or doing business" within the meaning of Section 105 of the Revenue Act of 1935 and Section 401 of the Revenue Act of 1936.

STATUTE AND REGULATIONS INVOLVED.

The statute and regulations involved are set forth in the appendix, *infra*, pages 9-11.

STATEMENT.

For a brief but comprehensive and accurate summary of all of the salient facts in this case, the respondent calls attention to the findings of the District Court (R. 1-3) which is hardly longer than the statement in petitioner's brief (pp. 4-6). The following facts are not fully stated in petitioner's brief: The respondent at no time had an office of its own and had no one in its regular employment except an auditor who was paid a nominal annual salary (R. 3, 7). All of the respondent's activities have been directed toward the prompt liquidation of its assets, which was materially accomplished during the four taxable years in question (R. 3, 7, 15). The respondent's sole source of income has been from properties held by it for liquidation. This income was never reinvested or otherwise employed for profit, but promptly distributed to stockholders (R. 3, 7, 14-15).

REASONS FOR DENYING THE WRIT.

1. The Principles Involved Have Already Been Established by This Court and No Important Question Is Therefore Presented by This Decision.

As in substance admitted in the petitioner's brief (p. 7), the question of whether or not specified corporate activities are sufficient or are of such a nature as to constitute "carrying on or doing business" calls for the application of established principles to the facts under review, and generally does not warrant certiorari. The decision in each case must depend upon the particular facts before the Court. *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503, 516. This Court, having laid down the principles to be followed,[1] and recognizing that each case depends upon its particular facts, has consistently refused during the last fifteen years to grant certiorari in cases arising under the capital stock tax statutes.

The statement in the petition that the instant question is raised in about one hundred cases now pending in the Bureau is not surprising when it is borne in mind that the words "doing business" are not susceptible of an exact legal definition and that the decision in each case is to be determined by the facts of that particular case. It is noteworthy that it is not alleged how many cases were pending in the Bureau prior to this decision, nor whether any claims for refund have been filed as a result of this decision.

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[1] *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Zonne* v. *Minneapolis Syndicate*, 220 U. S. 187; *McCoach* v. *Minehill & S. H. R. R. Co.*, 228 U. S. 295; *United States* v. *Emery, Bird, Thayer Realty Co.*, 237 U. S. 28; *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503; *Edwards* v. *Chile Copper Co.*, 270 U. S. 452; *Phillips* v. *International Salt Company*, 274 U. S. 718. See also *United States* v. *Pyne*, 313 U. S. 127, in which four of the above cases were cited.

2. There Is No Conflict in the Decisions of the Courts.

The respondent submits that there is no decision of any Court in conflict with the decision in this case. The case of *Edgar Estates Corporation* v. *United States*, 65 C. Cls. 415, cited in the petition (p. 9), is distinguishable from the case at bar on the same grounds on which the *Edgar Estates* case was distinguished in *Johnson's Estate* v. *United States*, 37 F. Supp. 617, 624 (C. Cls., 1941), namely:

> "In that case (*Edgar Estates* case) it appeared that the plaintiff purchased and sold stock at a profit and it was held that considering all the activities of the corporation a degree of business activity was maintained within the meaning of the Revenue Law although the amount of business done was small."

The Court holding that Johnson's estate was not taxable further said, at page 624:

> "Only the holding, owning and selling of real estate remained, and the principal purpose was not profit but to liquidate the estate."[1]

This recent decision makes it clear that no conflict exists between the decisions of the Court of Claims and the decisions of other courts.

Other cases which have held that corporations engaged in liquidating assets are not doing business within the meaning of the capital stock tax statutes are: *Union Land and Timber Company* v. *United States*, 65 C. Cls. 129; *Clallam Lumber Co.* v. *United States* (3 cases), 34 F. (2d) 944; 34 F. (2d) 947, and 37 F. Supp. 542.[2]

---

[1] This language is much like that used by this Court in *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503, 516. See also *McCoach* v. *Minehill and S. H. R. R. Co.*, 228 U. S. 295, 308.

[2] The first two Clallam Lumber Co. decisions were handed down in 1927 and 1929, respectively, from which the Government did not appeal. The Union Land and Timber Company case was decided in 1928.

3. Article 43(a)(5) of Treasury Regulations 64 Is Not in Accord With the Proper Interpretation of the Revenue Act.

The Courts below both so held (R. 11, 16). It is axiomatic that a regulation may not extend the plain meaning of ordinary words used in a statute. This is because the power—

> "* * * to prescribe rules and regulations * * * is not the power to make law * * * but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute is a mere nullity." *Manhattan Co.* v. *Commissioner*, 297 U. S. 129, 134.

Also, while re-enactment of a statute, without substantial change, subsequent to the promulgation of Treasury regulations, may import a legislative approval of such regulations, it remains true that—

> "* * * where the law is plain the subsequent reenactment of a statute does not constitute adoption of its administrative construction." *Biddle* v. *Commissioner*, 302 U. S. 573, 582.

The words "carrying on or doing business", when considered in the light of the decisions of this Court, have a meaning which does not include the owning, holding and liquidation of property, and in consequence, rules and regulations which purport to extend the meaning of these words to include such items are void and of no effect. While some of the language of the regulations is taken from the opinions of this Court, Article 43(a)(5) and several other provisions in the Regulations are contrary to the judicial construction of the

statute.[1] Furthermore, Article 43(a)(5), as the petitioner seeks to apply it to the respondent, is inconsistent with Article 43(b)(2)[2], which is in conformity with the opinions of this Court, since the "orderly liquidation of property" necessarily involves "owning and holding" it and distributing "the avails". This inconsistency in the Regulations alone is sufficient reason for holding that Article 43(a)(5) is entitled to little consideration in construing the statute. *Estate of Sanford* v. *Commissioner*, 308 U. S. 39, 49; *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16, 20.

The unimportant part played by the regulations in construing the capital stock tax statutes is evidenced by the absence of any references to them in the opinions of the Courts.

Finally, it is inconceivable that Congress could have intended by the use of the words "carrying on or doing business" to have adopted the detailed and inconsistent interpretation given to such words by Articles 42 and 43 of the Regulations. This statute is distinctly not of the type which can be amended by an adoption of prior regulations which purport to cover each specific situation. It is apparent that there can be no more precise delimitation of the transactions embraced within the concept of the words "carrying on or doing business", than there can be in relation to fraud, undue influence, due process of law, contemplation of death, or other familiar legal concepts which are applicable to many varying circumstances. *United States* v. *Wells*, 283 U. S. 102, 117.

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[1] Article 43(a)(3), for instance, is directly contrary to the holdings in the *Emery*, *Zonne* and *McCoach* cases, *supra*.

[2] This provision has appeared in substance in the various editions of the applicable regulations ever since the Revenue Act of 1918.

CONCLUSION.

The District Court and the Circuit Court of Appeals correctly applied established principles to the facts in this case. It is respectfully submitted that the petition should be denied for the following reasons: (1) The principles involved have already been established by this Court and no important question is, therefore, presented by this decision, (2) There is no conflict in the decisions of the Courts, and (3) Article 43(a)(5) of Treasury Regulations 64 is not in accord with the proper interpretation of the Revenue Act.

RICHARD F. CLEVELAND,
AMBLER H. MOSS,
Counsel for the Respondent.

October, 1941.

APPENDIX.

[1]Revenue Act of 1935, c. 829, 49 Stat. 1014:

Sec. 105. Capital Stock Tax.

(a) For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.40 for each $1,000 of the adjusted declared value of its capital stock. * * *

[2]Treasury Regulations 64 (1936 Edition):

Art. 41. *Nature and Rate of Tax.*—The tax is an excise tax imposed with respect to carrying on or doing business during a taxable year ending June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not on the business itself * * *.

Art. 42. *Doing Business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business

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[1] The provisions of the subsequent capital stock tax statutes are, in so far as relevant, the same as Section 105, supra. Section 401 of the Revenue Act of 1936, c. 690, 49 Stat. 1648; Section 1200 of the Internal Revenue Code.

[2] Substantially to the same effect are the like numbered provisions in the 1938 Edition of Treasury Regulations 64.

conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

Art. 43. *Illustrations.* (a) *General.*—In general "doing business" includes any activities of a corporation whether it engages in—

(1) buying, selling, manufacturing, developing, financing, speculating, or otherwise dealing in property of any description;

(2) furnishing services of any character;

(3) leasing or managing properties, collecting rents or royalties;

(4) managing, financing, controlling or directing the operations, performing any function, or, in any other way, aiding or serving the general purposes of any affiliated or related company;

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; • • •.

(b) *Exceptions.*—Ordinarily the exceptions to "doing business" are restricted to limited activities of a corporation, such as—

(2) the distribution of the avails of property and the doing only of such acts as may be neces-

sary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 601.

M. HAMPTON MAGRUDER, COLLECTOR OF INTERNAL REVENUE,

Petitioner,

v.

WASHINGTON, BALTIMORE AND ANNAPOLIS REALTY CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

RICHARD F. CLEVELAND,
AMBLER H. MOSS,
Counsel for the Respondent.

The Daily Record Co. Print, Baltimore.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the District Court (R. 111-116) is reported at 35 F. Supp. 340. The opinion of the United States Circuit Court of Appeals for the Fourth Circuit (R. 123-127), affirming the decision of the District Court, is reported at 120 F. (2d) 441.

JURISDICTION.

The judgment below was entered June 11, 1941 (R. 128). The petition for a writ of certiorari was filed September 10, 1941, and was granted October 27, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

The sole question presented is whether the courts below were correct in holding that the taxpayer, a corporation engaged in liquidating its assets, was not "carrying on or doing business" within the meaning of the applicable revenue statutes imposing the capital stock tax.

STATUTES AND REGULATIONS INVOLVED.

The pertinent portions of the applicable statutes and regulations are set forth in the Appendix, *infra*, pp. 33-36.

STATEMENT OF FACTS.

The facts are simple and not in dispute. The Respondent Corporation was organized on September 30, 1935, by a protective committee of bondholders of the Washington, Baltimore and Annapolis Electric Railroad Company (R. 117). The purpose of forming the Corporation was for convenience in holding certain properties formerly owned by the Railroad Company, then in receivership, and, as the District Court found as a fact, "to liquidate them in an orderly manner, and to distribute their avails" to Respondent's stockholders, who were the former bondholders of the defunct Railroad Company (R. 118).

The District Court also found that the activities of the Corporation have consisted solely of "owning the properties above referred to, and selling them from time to

time, or making rentals under short term leases (cancellable on short notice, R. 106); paying taxes, insurance premiums, and other expenses incident to such ownership; paying the salaries of its officers (three in number, a President, Vice-President, and Secretary-Treasurer) which were at all times nominal, except on one occasion when additional compensation in the nature of bonuses was paid in connection with extensive sales; paying attorneys' fees and dividends". (R. 118).

The Respondent had no office of its own, and had no one in its regular employ except the three officers and an auditor, who were paid nominal annual salaries (R. 118).

All net proceeds, except small reserves for contingencies, were passed over to the stockholders as received. The total amount paid them by December 31, 1939, was $75.00 per share. Respondent's funds were never "reinvested or otherwise employed for profit". (R. 119). Such rents as were received from short term cancellable leases were at all times less than allocable carrying charges (R. 98). "All of Respondent's activities have been directed toward the prompt liquidation of its assets, which was materially accomplished during the four taxable years in question." (R. 119). The Secretary of the Corporation testified, "The Company was very anxious to get rid of all its property as quickly as possible in the same way the bondholders' protective committee had been doing. What we wanted to do was to sell and distribute and get out." (R. 94).

For the years ending June 30, 1936, through June 30, 1939, Respondent paid capital stock taxes of $6,000.00, $5,985.00, $3,000.00 and $3,005.00, respectively (R. 119). In a suit for the refund of these taxes the District Court held Respondent was not carrying on or doing business within the meaning of the applicable revenue statutes and that,

therefore, said taxes had been erroneously collected (R. 111-119). The Circuit Court of Appeals for the Fourth Circuit affirmed (R. 123-127).

OUTLINE OF ARGUMENT.

The two lower courts should be affirmed. The capital stock tax is an excise tax on a certain type of activity carried on by corporations and is not a tax on the privilege of using the corporate form as such; nor is it a property tax on the mere holding of property; hence, the only inquiry is as to what the Respondent did and not what its charter permitted.

The sole issue before this Court, therefore, as it was before the two lower courts, is whether Respondent Corporation was or was not "carrying on or doing business". This criterion is definite and familiar; many cases in this and lower Federal courts have set up a consistent and clearly understandable frame of reference which plainly excludes the limited activities of this Corporation, whether considered as a broad concept or in the microscopic matching of factual mosaic. This concept, reduced to its essence, involves the hope implicit in retaining and continuing to turn over assets or services for commercial gain. These assets used as a railroad had become unprofitable for years before the foreclosure, but the business was maintained as a going concern in the hope of better things; the foreclosure constituted formal renunciation of any further attempt to use the assets to carry on or do business. The Respondent Corporation was formed because of mechanical convenience in handling title to real estate vested in a large number of individuals; its sole object and its sole activity was to dispose of dead assets and distribute the "avails"—and not to keep, turn over, and employ live capital to earn money thereon. A corporation can use its

assets to "do business" or can liquidate them, but as to the same assets the functions are obviously mutually exclusive.

The Treasury regulations are only incidentally involved; moreover, two separate paragraphs thereof, both of which apply to Respondent, squarely contradict each other. The two courts below properly held that the regulations do not preclude a judicial determination of this case on these facts and followed the uniform and long standing judicial formulation of the concept of "carrying on or doing business". Both the judicial and the partisan interpretations have survived many silent re-enactments of the law, so that in this case there can be no application of the rule that re-enactments adopt administrative or judicial interpretations "with the force of law"; at best, however, that rule is persuasive or not, even in a proper case, depending on the realistic question of fact as to the true intention of the Congress.

ARGUMENT.

I.

THE RESPONDENT WAS NOT "CARRYING ON OR DOING BUSINESS" WITHIN THE MEANING OF THE APPLICABLE REVENUE ACTS.

A. History and Nature of the Tax.

Federal excise taxes on the privilege of "carrying on or doing business" have been in effect from time to time since 1909, when the original so-called "corporation tax" was enacted.* All the acts have defined the privilege on which

* Act of August 5, 1909, Sec. 38, (c. 6, 36 Stat. 11, 112), Revenue Act of 1916, Sec. 407 (c. 463, 39 Stat. 789), Revenue Act of 1918, Sec. 1000 (c. 18, 40 Stat. 1126), Revenue Act of 1921, Sec. 1000 (c. 136, 42 Stat. 294), Revenue Act of 1924, Sec. 700 (c. 234, 43 Stat. 325), National Industrial Recovery Act, Sec. 215 (c. 90, 48 Stat. 207), Revenue Act of 1934, Sec. 701 (c. 277, 48 Stat. 680), Revenue Act of 1935, Sec. 105 (c. 829, 49 Stat. 1017), Revenue Act of 1936, Sec. 401 (c. 690, 49 Stat. 1733), and Revenue Act of 1938, Sec. 601 (c. 289, 52 Stat. 565). The statutory provisions which are pertinent in this case are identical, and will be referred to for convenience as now set forth in I. R. C., Sec. 1200.

this excise tax has been imposed as that of "carrying on or doing business", so that the interpretation of this term under prior acts would be controlling in the instant case, where the phrase in question is identical.

The Treasury in its brief (p. 25), for the first time in the litigation of this case, suggests there is some significance in the omission of the words "organized for profit" in the 1918 and subsequent capital stock tax statutes, although it admits that the legislative history of the act does not reveal any reference to or explanation of the elimination of these words. All of the numerous cases decided since 1918 have applied the principles established by the prior decisions of this Court, including *Edwards v. Chile Copper Company*, 270 U. S. 452, in which both the 1916 and 1918 acts were considered. Mr. Justice HOLMES stated in the opinion in that case (p. 455), referring to both the 1916 and 1918 acts, and citing the former decisions of this Court, that the exemption from the tax would apply when a corporation was "not pursuing the ends for which the corporation was organized, *in the cases where the end is profit*". (Italics supplied.) It is submitted that the words "organized for profit" were eliminated for the simple reason that this Court had decided on numerous occasions that the incidence of the tax should be determined not by what a corporation is *organized* to do, but what it is actually doing during the taxable year. *McCoach v. Minehill & S. H. R. Company*, 228 U. S. 295; *United States v. Emery, Bird, Thayer Realty Co.*, 237 U. S. 28; *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503. It follows that the question of whether liability exists is the same under all the statutes.

Furthermore, this Court's decision in *United States v. Emery, Bird, Thayer Realty Co., supra*, is a complete answer to the Treasury's argument that taxability necessarily follows the performance of the corporate purpose, without

more, for this Court there held *not* taxable a corporation which was carrying out every purpose of its organization. As stated in *Lane Timber Co. v. Hynson*, 4 F. (2d) 666 (C. C. A. 5), "If a corporation is not engaged in business, it cannot make any difference that what it is doing is authorized by its charter." The reason for the rule is "that the tax is imposed not upon the franchises of the Corporation irrespective of their use in business, nor upon the property of the Corporation, but upon the doing of corporate * * * business and with respect to the carrying on thereof * * *." *Flint v. Stone Tracy Co.*, 220 U. S. 107, 145; *McCoach v. Minehill & S. H. R. Co.*, *supra*, 305.

A reference to the decisions of this Court construing these statutes shows that there is a vital distinction between the kinds of "business" done by corporations; that one kind is taxable and the other is not; and this for the reason that this excise tax, if applied without regard to this distinction, would become as to one kind of "business" in reality not an excise tax but a direct tax on the ownership of property, which this Court has specifically held this excise tax not to be. In *United States v. Whitridge*, 231 U. S. 144, 147, Mr. Justice PITNEY, in the opinion of the Court, shows the genesis of the 1909 tax and the reason for the distinction in the following language:

> "As repeatedly pointed out by this Court, the corporation tax law of 1909—enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment—imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income. It was enacted in view of the decision of this Court in Pollock v. Farmers' Loan and T. Co., 157 U. S. 429, 158 U. S. 601, which held the income tax provisions of a previous law (act of August 27, 1894) to be unconstitutional because amounting in effect to

a direct tax on property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."

This Court accordingly decided that a corporation was not liable for the tax where its activities

> "* * * amount to no more than receiving the ordinary fruits that arise from the ownership of property."
>
> *McCoach v. Minehill & S. H. R. Company, supra*, 306.

The important principle which may be deduced from all the decisions is that "carrying on or doing business" depends upon the pursuit of profit through the dedication of capital to a commercial enterprise. The determining factor concerning which inquiry must be made is the *purpose* for which the activities of a corporation are carried on, as transactions not entered into for the purpose of earning profits do not constitute the carrying on of, or engaging in business.

The Circuit Court of Appeals below, referring to an earlier case decided by it,* said (R. 126):

> "There we reviewed the authorities and held that very slight activity constitutes "doing business" when the end is profit. There does not necessarily have to be a profit made, the result of doing business may be a loss, but the end sought must be to make a profit."

This Court has broadly defined the applicable rule in *Von Baumbach v. Sargent Land Co., supra*, 516:

> "It is evident, from what this court has said in dealing with the former cases, that the decision in each instance must depend upon the particular facts before the court. The fair test to be derived from a consid-

* *United States v. Atlantic Coast Line Co.*, 99 F. (2d) 6, (opinion revised, *United States v. Atlantic Coast Line Co.*, 99 F. (2d) 932), certiorari denied, 306 U. S. 645.

eration of all of them is between a corporation which has reduced its activities to the owning and holding of property and the distribution of its avails and doing only the acts necessary to continue that status, and one which is still active and is maintaining its organization for the purpose of continued efforts in the pursuit of profit and gain and such activities as are essential to those purposes."

Moreover, the distinction is not between a business and a charitable corporation (which is specifically exempted),* but rather between one actively seeking to earn a living by commercial activity, and one realizing only an incidental "profit" by the sale of capital assets. The latter is not taxable. As stated in *Clallam Lumber Company v. United States*, 34 F. (2d) 944, 946 (W. D. Mich., 1927):

> "Doing business necessarily involves the pursuit of gain through commercial activity and should be distinguished from profit derived from the sale of capital assets, which results solely from enhanced market value."

And in *Union Land and Timber Co. v. United States*, 65 C. Cls. 129, 135, the court said of a realty corporation in the process of liquidation:

> "No business enterprise could discontinue advantageously without putting forth its best efforts to realize the greatest possible sum for its assets, and the mere fact that in the course of such proceeding profits may at times be realized * * * does not designate the transaction as 'doing business' within the intent of the taxing act."

It is clear from an application of these principles to the facts in this case that the Respondent was neither organized nor operated to seek a profit by commercial activity.

* Section 1201 (a) (1) of the Internal Revenue Code specifically exempts corporations which are exempt from the income tax.

It was found by the District Court that the Respondent was formed to take over assets, "to liquidate them in an orderly manner, and to distribute their avails." (R. 118), and this is all the Respondent did. The purpose never was to employ the assets to earn a current profit, but to get rid of them as quickly as possible. The stockholders knew from the beginning that they could not make a profit,* but hoped only to salvage what they could.

The Respondent did not have charter power, nor authority from the Interstate Commerce Commission, or the Maryland Public Service Commission, to operate its assets in the business to which they had been devoted before the railroad was dismantled. Once the railroad was broken up, and the rolling stock and equipment sold, the remaining scattered assets were inappropriate for use to carry on any recognizable business.

B. A Corporation Is Not "Carrying on or Doing Business" When It Is Not Employing its Assets for Gain by Commercial Activity Even Though it is Not Actually Liquidating.

Under the authorities, a corporation need not be actually winding up and selling off its assets to be excluded from taxation. It is not "doing business" if it merely holds property and does the necessary acts to maintain and service it.

In *United States v. Emery, Bird, Thayer Realty Co.*, 237 U. S. 28, the corporation was organized for the purpose of acquiring title to real estate. The only business done was to keep up the corporate organization, and to collect the rent received from its single lease and distribute it to stockholders—in much the same way as the Respondent handled rentals and proceeds from sales. The Supreme

* The Petitioner admits that the Respondent's stockholders will lose heavily (Petitioner's Brief, p. 22).

Court held that the mere receipt and distribution to its stockholders of rent was not doing business. In *Stafford Owners v. United States*, 69 C. Cls. 478, the corporation consistently performed the function of holding title to real property for which it was formed, but was held not taxable on the ground that it had not been organized or operated for profit. The resemblance of the two corporations in these cases to the present Respondent lies in the fact that they were both organized and operated merely as repositories for the legal title to real estate (R. 92-93), and as conduits of the income therefrom to its beneficial owners.

Two of the leading decisions of this Court on the subject of "doing business" held corporations not taxable which had been organized actively to manage and operate real property, which did so for a time but, prior to the taxable years, had reduced their activities to the mere holding of title and collection and distribution of income. In *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, a corporation was originally organized for and engaged in the business of letting stores and offices in a building owned by it. Subsequently it made a lease of all its property for 130 years at an annual rental of $61,000, and thereafter its activities were restricted to receiving and distributing the rentals, and to maintaining its corporate existence. It was held to have "practically gone out of business in connection with the property" upon the making of the lease and was, therefore, exempted from the capital stock tax.

McCoach v. Minehill & S. H. R. R. Co., 228 U. S. 295, is an even stronger case because of the extensive activities of the corporation which were held not "doing business". It had been actively engaged in constructing and operating a railroad for many years prior to the taxable period. It then leased its entire property to another railroad for 999

years at a yearly rental of $253,000, which represented 6% upon the lessor's capital stock. After the execution of the lease the corporation had no connection with the operation of the railroad properties. It did, however, maintain its corporate existence through legal formalities and retain officers, a Board of Managers and employees at its office. In addition to receiving the annual rental under the lease as well as interest on its bank deposits, it maintained a "contingent fund", the income from which amounted to $24,000 annually. The corporation collected the interest and dividends from said funds, invested the proceeds and made distributions among its stockholders of dividends. In holding the corporation tax-exempt, the Supreme Court established the following test—adopted by the court below in determining that the Respondent was not doing business (R. 126-7):

> "The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business; in which event the investment-income may be added to the business income in order to arrive at the measure of the tax, and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income and dividing it among its stockholders. In the former case the tax is payable; in the latter not." (228 U. S. at 308.)

In the *McCoach Case* this Court held that the profits realized, in spite of their size and the numerous activities necessary to produce them, were insufficient to constitute doing business because they "amount to no more than receiving the ordinary fruits that arise from the ownership of property." Clearly the Respondent's receipts, consisting of rentals and proceeds from sales of realty, were just this

and no more. It received no income from "outside property".

Cases involving corporations whose assets consist of securities are in point as presenting another specific application of the rule enunciated in the above cases: the owning of property and distribution of its avails, plus incidental maintenance activities, do not constitute doing business. This principle applies whether the property is realty or securities and whether the income is rent or dividends and interest. See *Eaton v. Phoenix Securities Co.*, 22 F. (2d) 497, 498 (C. C. A. 2).

A leading case of this type is *Rose v. Nunnally Investment Co.*, 22 F. (2d) 102 (C. C. A. 5), *certiorari* denied, 276 U. S. 628. There the corporation, having been engaged in the manufacture and sale of candy, sold its business to another company of the same name organized for the purpose. Thereafter the proceeds of the sale constituted the plaintiff's entire assets, part of which consisted of 40% of the stock of the purchasing company. The average value of the assets was $2,500,000 throughout the taxable years, during which it increased about 10%. Loans were made to stockholders of more than $1,000,000 and loans to nine employees of the operating subsidiary of from $2,000 to $6,000. These loans, represented by interest-bearing notes, were regularly increasing during the period. Moreover, several loans aggregating $8,000 were made to another corporation owned by one of the taxpayer's stockholders. At various times large amounts of cash totaling $400,000 were realized from maturing bonds, in addition to regular dividends and interest. The cash received, in excess of that on hand, advanced on loans, and paid out in regular semi-annual dividends of $50,000, was actually reinvested in securities—not distributed. The corporation was held not

to be doing business since it was not using its resources "to further business opportunity or standing". This Respondent has neither made nor received any loans, and has not reinvested the proceeds of its property (R. 118, 119), but has promptly distributed all net receipts to its stockholders. See also *United States v. Peabody Co.*, 104 F. (2d) 267, 270 (C. C. A. 6).

C. A Corporation is Not "Carrying on or Doing Business" When its Primary Function is to Liquidate its Assets and Distribute the Proceeds Among its Stockholders.

The District Court below found as a fact that the Respondent was organized to acquire the properties, "to liquidate them in an orderly manner, and to distribute their avails to its stockholders". (R. 118). It was formed, not to carry on a business, but to take title to the scattered remnants of an unsuccessful venture and bury the remains. As Mr. Griswold, the Secretary-Treasurer, testified (R. 94), it was an urgent liquidation:

> "The Company was very anxious to get rid of all its property as quickly as possible in the same way the Bondholders' Protective Committee had been doing. What we wanted to do was to sell and distribute and get out."

Of the cases involving corporations actually engaged in liquidation during the taxable years, there are five which involve striking similarities to the facts in Respondent's case. In *Johnson's Estate v. United States*, 37 F. Supp. 617 (Court of Claims), the corporation was formed in 1904 to acquire twenty acres of suburban real property from the executor of its former owner, who had devised it to his five sons. The consideration for this purchase was stock of the plaintiff corporation, which was ultimately distributed to them. For twenty-five years it carried out its broad charter powers to engage in a general real estate

development business by buying, improving, renting and selling large amounts of residental property. In 1929, however, the plaintiff adopted a policy of gradual liquidation, and a liquidating dividend was immediately distributed. Thereafter it discontinued many of its activities, ceased purchasing additional land, and generally reduced its operations to the maintenance of its remaining properties and the making of advantageous sales. It maintained an office force and grounds keepers, received rents, made repairs, advertised its holdings for sale, and undertook contracts with brokers and agents for their disposal. Although all its efforts during the taxable years 1934, 1935 and 1936 were directed toward ultimate liquidation, at the end of this period its assets were still valued at $2,300,000. In holding the corporation *not* liable for capital stock taxes, the Court of Claims applied the test established by this Court in *McCoach v. Minehill & S. H. R. R. Co.* (quoted *supra*, page 12), and concluded that:

> "If we apply the rule laid down above, it is clear that the plaintiff was not doing business in the period involved, as it made no investments and was not in receipt of income from what might be called outside property. Its only operations were in owning the property, maintaining the investments, collecting the income and dividing it among the stockholders."

If, the Court of Claims also said, a corporation is actually engaged in liquidating its assets, it is immaterial that market conditions make this a slow process where the stockholders are attempting to realize the best price therefor. It was conclusive that "only the holding, owning and selling of real estate remained, and the principal purpose was not profit but to liquidate the estate".

The opinion in the *Johnson Case* is therefore the broadest possible affirmation of the rule followed by the court be-

low, exempting from the capital stock tax a corporation in the process of liquidation. This is epitomized in the statement by the Court of Claims that:

> "The operations and transactions of the corporation were carried on merely for the purpose of reducing the property of the estate to a form in which it could be readily distributed among the heirs, and such activities, we think, do not constitute a business."

This Court in *United States v. Pyne*, 313 U. S. 127, a case involving income tax deductions, held that an executor engaged in the collection, management and distribution of corpus and income, was not "carrying on * * * business". The Court stated that the rule is not inflexible and explained that,

> "Rather obviously, there could be clear cases where executors 'carry on * * * business' by continuing to operate a store, a factory or some other well-known, well-marked type of business activity. But in the absence of evidence showing activity coming within the general acceptation of the concept of carrying on a trade or business, it cannot be said as a matter of law that an executor comes into this category *merely because he conserves the estate by marshalling and gathering the assets as a mere conduit for distribution.*" (Italics supplied.)

It is submitted that the function of an executor who administers the assets of a deceased person is almost identical with that of Respondent, which was created to administer the scattered assets of a dead business; and that the above language in the *Pyne Case* is equally applicable to the Respondent here.

In *Union Land & Timber Co. v. United States*, 65 C. Cls. 129, a corporation was organized in 1906 to engage in a general lumber business and the production of turpentine.

After having performed this function for a number of years, at the end of 1917 it decided to liquidate. Thereafter, all but one of its offices were discontinued, and it ceased all of its business activities except the effort to dispose of its holdings. It bought no more land, timber, securities or property of any kind, neither lent nor borrowed any money, and immediately distributed all proceeds from the sale of its assets to its sole stockholder, a parent company. During the taxable years 1918 to 1921, the corporation entertained competitive offers in attempting to dispose of its real estate holdings at the most favorable prices, and succeeded in selling 37 parcels, comprising a large portion of its assets, as well as considerable timber. Although its efforts to liquidate were intensive and long-continued, they were not immediately successful, as is illustrated by the fact that it retained a portion of its holdings when the suit was brought in 1928. Realizing the difficulty of selling at a fair price during the depression of the early 1920's, the company several times refused offers to purchase lands and turpentine rights, in the hope that better deals might later be made. In addition, it executed eight turpentine leases on its timber lands during the taxable years. In holding that these activities did not constitute doing business, the Court of Claims made the following significant statement at page 135:

> "We think this case comes squarely within the exception which exempts a liquidating corporation from the capital stock tax. The defendant predicates a contrary opinion upon the fact that at times offers for lands were refused, and negotiations continued to obtain more; that turpentine rights were sometimes let, and finally that the inherent nature of the plaintiff's business was of necessity the doing of the very things it did do—i. e., buy and sell land and turpentine rights, etc., for profit. The charter rights of the corporation disclosed its purposes, and among them was the pur-

chase and sale of lands and turpentine rights; but the continuance of these activities as a going concern, promoted for the purpose of paying dividends to its stockholders, and doing the same things to acquire sufficient funds to pay creditors are distinctly different. One contemplates the present and the future, looks toward an indefinite continuance of business activities. The other is predicated in this case largely upon the misfortunes of the past, and looks exclusively to a disposition to the best advantage of what the corporation has and discontinuing business."

Three revealing cases on this point, all entitled *Clallam Lumber Co. v. United States*, were decided by Judge Raymond in the Western District of Michigan in 1927, 1929, and 1940, and are reported in 34 F. (2d) 944, 34 F. (2d) 947, and 37 F. Supp. 542. The company was incorporated in 1910 with a capital stock of $2,100,000, of which $2,006,131 was paid in by conveyances of about 41,000 acres of timber lands formerly owned by the incorporators as individuals. Although the charter granted broad powers to engage in a general real estate and lumber business, "the prime reason for incorporating was to make it possible to sell the lands to greater advantage, their marketability having been affected adversely by the fact that the various individual holdings were interlaced with each other in such manner as to make the consummation of advantageous sales a matter of difficulty". During the twelve years intervening between incorporation and the taxable period involved in the first case (1922-3) the company had purchased several small parcels of land for various purposes, but with the ultimate purpose of thereby increasing the salability of the major holdings. In addition, 12,181 acres were sold to a lumber company for $2,000,000, the payments for which were to extend over the ten years from the end of 1921 to the end of 1931, including the taxable years 1922-3. Part

of the proceeds was always used to meet expenses, the remainder being distributed to stockholders. During the taxable period the plaintiff borrowed $15,000 from one of its stockholders; it employed an engineer to investigate the possibility of constructing a railroad from its lands to serve as an outlet for purchasers of timber, and granted options to purchase. The usual expenses were also incurred for fire protection, for the employment of counsel, and for administrative activities. The government contended that the company had "been engaged in a well recognized form of business activity, namely, that of speculating in timber lands, involving the purchase of such lands, the holding thereof until a satisfactory price is received, the protection of the timber from fire and trespass, and the ultimate sale thereof". The plaintiff maintained, on the other hand, that its activities "related merely to the ownership and preservation of its timber lands with the view of liquidating its capital assets and distributing the proceeds among its stockholders as soon as a fair price therefor could be obtained". In the first case, the District Court upheld the corporation on the ground that the activities were directed to the use of reasonable and proper means for carrying out the intention to liquidate the properties. The following statements appear at page 946:

> "Sales of capital assets for distribution of proceeds among stockholders deny the conclusion that the organization was maintained 'for the purpose of continued efforts in the pursuit of profit and gain'. *Doing business necessarily involves the pursuit of gain through commercial activity, and should be distinguished from profit derived from the sale of capital assets, which results solely from enhanced market value.* * * * In the cases in which liability has been sustained, there has been the element of use of capital assets to produce profit. * * * In those cases in which

the capital assets have been disposed of and the proceeds used for distribution among stockholders, it has been held that no such liability arose." (Italics supplied.)

The second *Clallam Case* involved the corporation's activities during the years 1924 and 1925. There had been two important additional activities during this period. First, a contract was made with another company for the construction and operation of a private logging railroad, the sole object being to make the timber salable by providing transportation facilities to tidewater. Approximately 18 miles of railroad were constructed, one-half of the cost being paid by the taxpayer from borrowed funds. It did not operate the railroad itself, but as a direct result of the latter's existence, all the timber lands had been sold by 1927. Second, a logging contract was entered into during 1924 for the sale of standing timber on 4,380 acres of land, which the vendee was to cut and remove. The proceeds were distributed to stockholders after the payment of expenses, and none were reinvested. The District Court held that these additional activities did not constitute doing business, saying, at page 948:

> "In each of the various cases in which the courts have held corporations subject to this tax, there appeared the obvious purpose of continuing the business indefinitely in the pursuit of profit. The companies were principally concerned with *profits*, not the *distribution of capital*, and were in some of the cases investing the gains. There is nothing in the activities of the Clallam Lumber Company to indicate 'continued efforts in the pursuit of profit', or an intent to indulge in such efforts. All activities of the company in the instant cases were calculated to bring about and were reasonably directed toward liquidation." (Italics the court's.)

As to the effect of the railroad construction and logging contracts, the court continued:

> "It seems, however, to be well established by the evidence that these activities were reasonably adapted for, and were in fact the only practical methods of carrying out the primary purpose of incorporating, namely, to liquidate and distribute capital assets."

In 1927 the Clallam company made three more contracts for the sale of standing timber. Subsequently it supervised logging operations to make certain that the maximum amount would be produced and employed field agents and surveyors to determine the quantity of timber available and to fix the price. This continued through the years 1936 and 1937, involved in the third case. During this taxable period the company sold a quantity of timber and agreed to modify its existing contracts by reducing certain prices and changing the type of surveys. It also paid certain executive salaries and direct expenses for field supervision. It collected small rents under an oil and gas lease and interest on Treasury Notes which it held as a reserve for contingencies. The District Court said that the company "was doing only those things appropriate to accomplish ultimate liquidation" and was not liable for the payment of the tax.

When compared, point by point, with the present case, these three involving the Clallam Lumber Co. appear strikingly similar. Both the Clallam Company and the Respondent were formed for the purpose of liquidating real estate. Neither corporation engaged in the pursuit of gain through commercial activity or the use of capital assets, but merely held its lands and effected sales when fair prices could be obtained. In both situations, proceeds were immediately distributed to stockholders after expenses had been met. Most of these expenses were substantially iden-

tical in both cases, since the liquidation of a railroad as well as that of a lumber company, requires the services of field agents, engineers, and attorneys. Moreover, the Government can point to nothing in the present case comparable to the capital expenditure made by the Clallam Company for the construction of a railroad or to the continuing activities necessitated by the logging contracts.

D. The Cases Cited By the Petitioner are Clearly Distinguishable.

The Respondent submits that there is no decision of any court in conflict with the decisions of the two lower courts in this case.

In all of the cases cited in the Petitioner's brief, where the tax was held to apply, the corporations involved were using their assets for the purpose of continued effort in the pursuit of gain, and were not liquidating. In *Flint v. Stone Tracy Co.*, 220 U. S. 107, the corporations had never relinquished the active operation and management of their properties. This was true also in *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503. In the latter case the taxpayer, a mining corporation, had leased its holdings to others who were to carry on the actual mining operations, but it nevertheless maintained active supervision and control over the business. It exercised constant watch and care over the operations of the lessees, inspected the work in the mines as it proceeded, made explorations for ore, and employed agents to see that the mining operations were properly carried out, and that the lessees lived up to the agreements of their contracts. This Court held that these acts were all "done in the pursuit of profit and gain."

In *Edwards v. Chile Copper Co.*, 270 U. S. 452 the taxpayer was organized to finance a mining company, all of whose stock it acquired. It then authorized the issue of

collateral trust bonds for $100,000,000 secured by this stock, and from time to time advanced to the subsidiary large sums realized from their sale. Of the remaining proceeds, part were invested in Government bonds, but most were deposited with a bank which put the funds out on call loans. Over $332,000 was received in one year from the interest on these loans, entirely apart from the income on the Government bonds. The taxpayer also maintained an office with numerous employees and records and managed the subsidiary's affairs by voting its stock. It was held to be doing business solely because organized and operating for profit and because its affairs were integrated with those of its subsidiary which, under the laws of its domicile, could not have operated without the parent.

The cases in the lower courts cited by the Petitioner are also clearly distinguishable. In *United States v. Peabody Co.*, 104 F. 2d 267 (C. C. A. 6), the court held the corporation taxable because: "It is a going concern which has built up a large reserve available for profitable enterprise. It maintains its organization for a purpose which involves profits." That corporation had a surplus of over $2,100,000, which was increased during the taxable period by undistributed earnings, and a sinking fund of $100,000 created out of rentals and used in stock market operations. In *Harmar Coal Co. v. Heiner*, 34 F. (2d) 725 (C. C. A. 3), *certiorari* denied, 280 U. S. 610, the taxpayer was said to have been "organized for a definite though limited business purpose involving profits", and in *Argonaut Consolidated Mining Co. v. Anderson*, 52 F. (2d) 55 (C. C. A. 2), the court stated that "it did not distribute all its revenues in dividends, but in substantial part invested them in current securities which it bought and sold with an eye to their prospects of rise and fall. * * * It invested in a mining

property in Minnesota, not then, or ever since developed. These can be accounted for only on the assumption that it was looking about for speculative ventures. * * *"

Decisions of the Circuit Courts of Appeals in the first, second, fifth, seventh and ninth circuits, and of the Court of Claims, most of which are cited in the Treasury's brief, all gave as a reason for holding that the corporations there involved were subject to the tax, that the corporations as a question of fact, were not in liquidation. *American Investment Securities Co. v. United States*, 112 F. (2d) 231 (C. C. A. 1), is much like the *Chile Copper Case, supra*, in that it controlled and financed a large subsidiary and "at no time did it attempt to liquidate its affairs." (page 233). In *Page v. M. Rich & Bros. Co.*, 99 F. (2d) 607 (C. C. A. 5, *certiorari* denied, 306 U. S. 662, the decision was based upon "the greatly significant fact" that the corporation was engaged "not in liquidation, but as an active and going concern * * *", the court noting that: "For nearly ten years this Company has continued in existence, maintaining itself as a going corporation, undertaking no liquidation, undergoing none." In *New Haven Securities Co. v. Bitgood*, 87 F. (2d) 759 (C. C. A. 2), the court stated that the taxpayer was "not in liquidation" and could not "claim exemption as an inactive corporation, doing no more than liquidating its assets." Likewise, in *Lyon Lumber Co. v. Harrison*, 113 F. (2d) 443 (C. C. A. 7), the court made the revealing statement at page 447 that:

> "It chose not to quit, not to liquidate. So choosing, it remained in the list of corporations who were 'doing business'. Unhappily its business was neither large nor profitable, but considering the times it was 'doing business' as distinguished from 'liquidating' or 'closing up' its business."

And in *United States v. Hercules Mining Co.*, 119 F. (2d) 288 (C. C. A. 9), *certiorari* denied, No. 522, this Term, the court stated:

> "It had not undertaken and its stockholders did not appear to contemplate the liquidation of its assets or the winding up of its affairs; * * * In short, taxpayer was pursuing its corporate end of ultimate profit in the light of the particular circumstances which then confronted it."

The Court of Claims held that the taxpayer was taxable in *Chevrolet Motor Co. v. United States*, 64 C. Cls. 211, *certiorari* denied 277 U. S. 585, because "engaging in business activities inimical to the process of final liquidation."

Soon after the *Chevrolet Motor Co. Case* the Court of Claims decided the case of *Edgar Estates Corporation v. United States*, 65 C. Cls. 415, upon which the Petitioner so strongly relies. In that case sales were made during the taxable years, in some instances for cash and in others, part for cash and the balance in notes secured by purchase money mortgages. Not only was interest collected on the latter, but on at least three occasions the proceeds of sales, in the total amount of approximately $15,000, were invested in Federal and corporate bonds which were later sold at a profit. That case is distinguishable from the case at bar on the same grounds on which it was distinguished by the Court of Claims itself in the recent case of *Johnson's Estate v. United States*, 37 F. Supp. 617, 624, *supra*, namely:

> "In that case (*Edgar Estates Case*) it appeared that the plaintiff purchased and sold stock at a profit and it was held that considering all the activities of the corporation a degree of business activity was maintained within the meaning of the Revenue Law, although the amount of business done was small."

It is noteworthy that the court in *Johnson's Estate* did not distinguish the *Edgar Estates Case* on the ground that in the latter the corporation was carrying out the purpose of its organization, i. e., to liquidate assets, the ground principally relied upon by the Treasury in our case.

The Petitioner also relies upon the case of *Conhaim Holding Co. v. Willcuts*, 21 F. (2d) 91 (D. Minn.). The court in that case stated that the facts were almost identical with *Rose v. Nunnally Investment Co.*, 22 F. (2d) 102 (C. C. A. 5), *certiorari* denied, 276 U. S. 628, which had not then reached the Circuit Court of Appeals, and expressed "considerable doubt as to the correctness of that decision" by the District Court. The fact that the Circuit Court of Appeals for the Fifth Circuit subsequently affirmed the District Court in the *Rose Case* deprives the *Conhaim Case* of the little weight to which it otherwise might be entitled. In addition, the facts in that case show that numerous loans, for which the corporation charged interest, were made for the accommodation and benefit of stockholders and that "no distribution of assets or income has been made".

II.

THE TREASURY REGULATIONS.

A. The Regulations Interpreting the Statute Do Not Preclude Judicial Consideration of Their Validity.

The Treasury's brief makes much of the "validity" of Article 43(a)(5) of the regulations, which purports to characterize a liquidation as doing business. (We overlook for the moment the fact that there are two specific, applicable, and contradictory paragraphs of these regulations.) We believe that the test of validity of this, or any like regulation, is pragmatic, i. e., whether it can survive judicial scrutiny as to its reasonableness, correctness, and relevance. In other words, its validity is derivative from

judicial approval and not *vice versa*. There is no positive force in such a regulation which can oust the courts from independent consideration of the regulation as applied to an actual controversy. In a proper case there may be a *prima facie* persuasion which comes from the statistical probability that the impartial opinion of a rational man or agency is right instead of wrong. But here we have a very different situation: on the side of the Treasury there is its own self-serving broadside of general and illustrative regulations; on the side of the Respondent are considered decisions in similar cases by many courts, and a specific determination of this very case by the two courts below.

We do not suggest that this Court's present action is restricted by such former determinations, either of this very case or other similar cases (except, of course, as to the findings of fact by the District Court below). But surely there is here no presumption, or other fiction, to rescue the regulation, unless it commends itself on its merits.

B. The Two Paragraphs of the Regulations Which Apply to This Case Are Inconsistent and the Paragraph Relied on by the Petitioner Is In Conflict With Judicial Interpretation.

Actually, as we have above suggested, even if the total regulations were controlling, Respondent's case cannot stand or fall on Article 43(a)-(5) alone, which purports to define a liquidation as a taxable doing of business. The Treasury's brief is understandably silent as to Article 43(b) of the same regulations, which includes the following among corporate activities which are *not* taxable:

> "(2) the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property."

The District Court found as a fact—in finding No. 5 (R. 118)—that Respondent was doing exactly and only what is declared in the above-quoted paragraph to be excluded from a taxable doing of business. On these facts the function of this Corporation must fall within both of these contradictory paragraphs of the same regulations. If there were any judicial disposition to follow tax regulations blindly, it would, therefore, be impossible in this case; a choice would still have to be made between the two inconsistent paragraphs. See *Estate of Sanford v. Commissioner*, 308 U. S. 39, 49; *Burnet v. Chicago Portrait Co.*, 285 U. S. 1, 16, 20.

Furthermore, although we would not press for blind adherence to this Court's own prior decisions, it can at least be noted that the language of Article 43(b)(2) is lifted bodily out of this Court's decision in *Von Baumbach v. Sargent Land Co., supra*, at page 516. (Quoted at pages 8-9 of this brief.) The word "avails" used in that opinion and adopted in the regulation is given but one meaning in Webster's New International Dictionary (Second Edition, 1940): "Proceeds, as the avails of a sale by auction". We labor this definition to forestall any contention that Article 43(b)(2) is limited to the receipt of income from the mere holding of specific property and that it does not include sales thereof.

Article 43(b)(2) also disposes of the major argument of the Treasury that somehow the same activity might constitute doing business if the Corporation had been formed for that very purpose, but would not constitute doing business if such activity represented only a reduction of formerly greater activity. (Treasury brief, pp. 16-21.) The regulation says, "either was organized for, or has reduced its activities to . . .". Furthermore, this Court has held that the actual activity in the taxable year and not the charter

powers determines taxability. *United States v. Emery, Bird, Thayer Realty Co.*, 237 U. S. 28, 32. Even less felicitous is the Treasury's further suggestion that Respondent is doing business because organized under a state business corporation law. (Brief, p. 118, footnote 19). The fact of the matter is that even charitable corporations were and still are formed under the same sections of the same law, and in the same manner as Respondent was formed. (Article 23, Annotated Code of Maryland, Editions of 1924 and 1939.)

Because of the conflict within the regulations, and because of the further conflict between judicial interpretation and Treasury interpretation, it is neither necessary nor appropriate in this case to re-visit the battlefield of controversy over the effect of re-enactment following administrative or judicial interpretation of a statute. In our case the Congress, by its silent, and as far as can be known, unaware,* re-enactments would have swallowed two contradictory regulations, and a judicial interpretation conflicting with one of the regulations and in harmony with the other. Whatever vitality in the rule survives after *Helvering v. Hallock*, 309 U. S. 106, it is commonly regarded as a mere aid in statutory construction and comes down to a question of fact as to how far the Congress really did consciously consider and deliberately act, or fail to act, with reference to a judicial or administrative interpretation. Thus, even in *Sibbach v. Wilson & Co.*, 312 U. S. 1, where the Civil Rules which were there involved had been referred to the Congress in accordance with the statute and had been debated before Congressional Committees, four members of this Court agreed in dissent that, "to draw any inference of tacit approval by non-action by

* There are apparently no Committee Reports which indicate that the regulations were considered.

Congress is to appeal to unreality." See also *F. C. C. v. Columbia Broadcasting System*, 311 U. S. 132, 137.

But there are two reasons why the rule of re-enactment should not apply to this case, even if it still operates in full vigor in its appropriate sphere. In the first place, the paragraph of this regulation which would make Respondent liable for this tax does not have the authenticity of a responsible act of "concurrent interpretation". As the regulation itself states, Article 43(a)(5) is only one of a series of *illustrations*, by which the Treasury sought to stake out in advance its claim to revenue in almost every imaginable combination of circumstances other than those specifically exempted by statute. The illustrations in question smack of the grasping language commonly encountered in corporate mortgages, which frequently cover not only specific property, but add on for good measure "together with all other property of whatsoever kind and wheresoever situate, now owned or hereafter acquired by said mortgagor".

In the second place, the re-enactment doctrine cannot fairly be followed without independent judicial review in this and other cases where the *ex parte* ruling purports to be the basis of a later decision in the rulemaker's own favor in a *bona fide* controversy. Article 43(a)(5) should be treated here as no more binding than the arguments of the Treasury's learned counsel in their interesting brief; such arguments may persuade, but cannot pre-judge a case in which the Treasury is a party. See Paul, Studies in Federal Taxation, Third Series, "Use and Abuse of Tax Regulations"; e. g., page 434.

CONCLUSION.

In conclusion, it is clear that Respondent was not taxable unless the mere liquidation of assets constitutes "carrying on or doing business". The seasoned authorities in this and other courts uniformly hold that the taxable concept of doing business involves more—it involves regular and continued application of assets to the pursuit of earnings. We submit flatly that it is a contradiction in terms to speak of liquidating assets and of carrying on business with the same assets.

The question of taxability is determined by what is actually done by a corporation, whether that is all the charter permits, or is less than the charter permits, or whether it is less than was previously done.

The regulations are contradictory, but could not in any event enlarge the familiar concept of doing business.

We urge that the action of the two lower courts be affirmed.

Respectfully submitted,

RICHARD F. CLEVELAND,
AMBLER H. MOSS,
Counsel for the Respondent.

February, 1942.

APPENDIX.

Internal Revenue Code, Sections 1200 (a) and 1201 (a) (1), which sections contain provisions found in the Revenue Act of 1935, Sec. 105, 49 Stat. 1017; Revenue Act of 1936, Section 401, 49 Stat. 1733; and Revenue Act of 1938, Sec. 601, 52 Stat. 565, read as follows:

Sec. 1200. Tax—(a) *Domestic Corporations.*

For each year ending June 30, and beginning with the year ending June 30, 1939, there shall be imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.

* * * * * *

Sec. 1201. *Exemptions.*

(a) The taxes imposed by section 1200 shall not apply—

(1) *Corporations exempt from income tax*

To any corporation enumerated in section 101;

* * * * * *

Treasury Regulations 64 (1936 Edition):

Art. 41. *Nature and Rate of Tax.*—The tax is an excise tax imposed with respect to carrying on or doing business during a taxable year ending June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not on the business itself * * *.

Art. 42. *Doing business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation orgnaized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized

for profit, any corporation which nevertheless engages in activities ordinarily carried on for profit is also doing business. It is immaterial whether the activities result in a profit or a loss, whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

Art. 43. *Illustrations.*—(a) *General.*—In general "doing business" includes any activities of a corporation whether it engages in—

(1) buying, selling, manufacturing, developing, financing, speculating or otherwise dealing in property of any description;

(2) furnishing services of any character;

(3) leasing or managing properties, collecting rents or royalties;

(4) managing, financing, controlling or directing the operations, performing any function, or, in any other way, aiding or serving the general purposes of any affiliated or related company;

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property; or

(6) any other activities coming within the ordinary and natural signification of the term "carrying on or doing business".

(b) *Exceptions.*—Ordinarily the exceptions to "doing business" are restricted to limited activities of a corporation, such as—

(1) the issuance and sale of its stock for cash as a preliminary step in the completion of its organization; or

(2) the distribution of the avails of property and the doing of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property.

Nor will a corporation be regarded as "doing business" if it has *no* activities, because it has—

(3) become dormant; or

(4) completed its business, as, for example, a real estate subdivision developed, sold and reduced to cash; or

(5) abandoned its business, as, for example, where prospective oil properties are proved worthless.

If the corporation's activities are not so limited as outlined in the preceding paragraph, it will be regarded as "doing business" within the meaning of the Act. Thus, a corporation is "doing business" if—

(A) in addition to the activities described in paragraph (b) (1) it engages in any other activity such as the making of contracts, the buying of materials or machinery, the construction of buildings, or the employing or discharging of individuals; or

(B) in addition to the activities described in paragraph (b) (2) it engages in any other activity, such as (i) in the case of a company holding securities, the investment or reinvestment of surplus or other funds in excess of an amount necessary to maintain its original investments, or (ii) in the case of a company which had leased its property to another, the maintaining or keeping the property in repair in accordance with the terms of the lease, or in other activities neces-

sary to enable the lessee properly to manage the leased property, regardless of whether such activities are performed on behalf and under the order of the lessee or that such acts are not of major importance; or

(C) although it retires from its principal business it nevertheless engages in other business activities or maintains its organization for the purpose of continued effort in the pursuit of profit or gain.

SUPREME COURT OF THE UNITED STATES.

No. 601.—October Term, 1941.

M. Hampton Magruder, Collector of Internal Revenue, Petitioner, *vs.* Washington, Baltimore and Annapolis Realty Corporation. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[April 13, 1942.]

Mr. Justice Murphy delivered the opinion of the Court.

This is a suit for refund of capital stock taxes paid by respondent for the years ending June 30, 1936, through 1939. We are asked to determine whether respondent was "carrying on or doing business" within the meaning of § 105(a) of the Revenue Act of 1935, c. 829, 49 Stat. 1017, and subsequent acts, which provide:

"For each year ending June 30, beginning with the year ending June 30, 1936, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1.40 for each $1,000 of the adjusted declared value of its capital stock."[1]

Respondent was organized in 1935 with broad corporate powers under the laws of Maryland by the protective committee for the bondholders of the defunct Washington, Baltimore & Annapolis Railway Company. It was formed for the purpose of liquidating certain properties formerly belonging to the Railway Company which the committee had acquired through foreclosure. Among the properties received by respondent from the committee were certain rights of way, easements, terminal properties, and other real estate located in Baltimore, Annapolis, and Washington, as well as at the other points along the line of the railroad, and the stock of a realty holding company which owned another realty company, both of which had been subsidiaries of the Railway Company for the purpose of holding legal title to real estate. The value of

[1] This language has not been changed, except for the tax periods and the amount of the tax, in the subsequent acts covering the tax period here in question. See § 401, Revenue Act of 1936, c. 690, 49 Stat. 1733; § 601, Revenue Act of 1938, c. 289, 52 Stat. 565. The provision is now incorporated in § 1200(a) of the Internal Revenue Code.

the properties received in 1935, as shown by respondent's balance sheet, was $419,250.

Since its incorporation respondent has been carrying on negotiations for the sale of the properties acquired, selling them from time to time as satisfactory offers were received, and renting unsold properties under short term leases in an attempt to earn the carrying charges pending ultimate sale. Receipts from sales during the four year period here in question were approximately $675,000, and rentals amounted to $136,000. At the end of this period respondent's books still showed properties worth $122,000. All net income, except small reserves for contingencies, was distributed as received to the stockholders, former bondholders of the Railway Company.

Respondent paid capital stock taxes for the four years in question and then brought this suit for refund of the payments in the District Court. The court held that because respondent was a liquidating corporation, it was not "carrying on or doing business" within the meaning of the capital stock tax and was therefore exempt. In so holding the court refused to give effect to the Treasury regulation claimed to be applicable.[2] 35 F. Supp. 340. The Circuit Court of Appeals affirmed. 120 F. 2d 441. We granted certiorari because of the importance of the question in the administration of the revenue acts. 314 U. S. —.

The regulation, Article 43(a)(5), provides:

"ART. 43. *Illustrations.*—(a) *General.*—In general 'doing business' includes any activities of a corporation whether it engages in—

"(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distributing the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;"

If the regulation is both applicable and valid, respondent manifestly cannot prevail.

On the question of applicability there can be no doubt for the language of the regulation precisely describes respondent's activities. We find without substance respondent's assertions that Ar-

[2] Article 43(a)(5) of Treasury Regulations 64 (1936 Edition).

ticle 43(b)(2)[3] is inconsistent with Article 43(a)(5) and that it more exactly fits the facts of this case. During the period in question respondent did not fall into that state of quietude, covered by the specific language of Article 43(b)(2), in which it was merely owning and holding specific property and distributing the resulting proceeds. See *Zonne* v. *Minneapolis Syndicate*, 220 U. S. 187; cf. *Von Baumbach* v. *Sargent Land Co.*, 242 U. S. 503, 516-17. On the contrary, respondent was actively engaged in fulfilling the purpose of its creation, the liquidation of its holdings for the best obtainable price.

Article 43(a)(5) is both a contemporary and a long standing administrative interpretation, having been in effect in substantially the same form since 1918, except for the period from 1926 to 1933 when the tax was not imposed.[4] We are of opinion that it is valid, as well as applicable. The crucial words of the statute, "carrying on or doing business", are not so easy of application to varying facts that they leave no room for administrative interpretation or elucidation. To be sure, in many, if not in most instances, the factual situation will be so extreme as to leave no doubt whether a corporation is doing business or not. But the nuances of facts between the two extremes have produced a nebulous field of confusion which has been recognized by courts striving to fit close cases into one category or the other.[5] Interpretative regulations, such as Article

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[3] "*Exceptions.*—Ordinarily the exceptions to 'doing business' are restricted to limited activities of a corporation, such as—

. . . . . .

"(2) the distribution of the avails of property and the doing only of such acts as may be necessary for the maintenance of its corporate status in the case in which the corporation either was organized for, or has reduced its activities to, the mere owning and holding of specific property."

[4] Article 5 of Treasury Regulations 38, issued under the Revenue Act of 1916, c. 463, 39 Stat. 756, provided:

". . . . A corporation formed to take over miscellaneous stocks, bonds, and other property, to negotiate the sale of the various items from time to time as opportunity and judgment dictate, and to distribute the proceeds from time to time as liquidation is effected, is organized for profit and while engaged in such liquidation is carrying on business."

This provision, with minor changes in wording, was continued in Treasury Regulations 50 (1919 ed.), Art. 18; (1920 ed.), Art. 11; Treasury Regulations 64 (1922 ed.), Art. 12; (1924 ed.), Art. 12; (1933 ed.), Art. 22; (1934 ed.), Art. 33. In 1936 Treasury Regulations 64 were reorganized and the substance of the provision quoted above was continued as Art. 43(a)(5) of the 1936 edition. No change was made in the 1938 edition.

[5] See Eaton v. Phoenix Securities Co., 22 F. 2d 497, 498; United States v. Hotchkiss Redwood Co., 25 F. 2d 958; Harmar Coal Co. v. Heiner, 34 F. 2d,

43(a)(5), are appropriate aids toward eliminating that confusion and uncertainty. Cf. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 102; *Textile Mills Securities Corp.* v. *Commissioner*, 314 U. S. —, No. 34, this Term.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

725, 727; Argonaut Consolidated Mining Co. v. Anderson, 52 F. 2d 55, 56; American Investment Securities Co. v. United States, 112 F. 2d 231, 232.

The decisions of this Court illustrate the difficult problems of classification encountered. See Cedar Street Co. v. Park Realty Co., 220 U. S. 107, 170; Von Baumbach v. Sargent Land Co., 242 U. S. 503; Edwards v. Chile Copper Co., 270 U. S. 452; Phillips v. International Salt Co., 274 U. S. 718—with which compare Zonne v. Minneapolis Syndicate, 220 U. S. 187; McCoach v. Minehill Railway Co., 228 U. S. 295; United States v. Emery, 237 U. S. 28.